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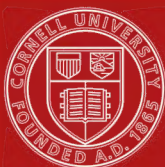
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THE
CRIMINAL LAW
CONSOLIDATION ACTS;

WITH
NOTES OF THE CASES DECIDED ON THEIR
CONSTRUCTION.

BY EDWARD W. COX, S.L.,

Recorder of Portsmouth;

AND

THOMAS WILLIAM SAUNDERS, Esq.,

Barrister-at-Law, Recorder of Bath.

THE THIRD EDITION,

CONTAINING
THE SUBSEQUENT CRIMINAL LAW STATUTES.

THE PRINCIPLES OF PUNISHMENT,

BY EDWARD W. COX, S.L.

THE LAW OF ARREST WITHOUT A WARRANT,

AND

THE LAW AS TO ATTEMPTS TO COMMIT
CRIMES,

BY C. S. GREAVES, Q.C.

A TABLE OF CRIMES AND THEIR PUNISHMENTS.

BY H. F. PURCELL, ESQ.

Barrister-at-Law.

LONDON:
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P R E F A C E.

THE following "Table of Crimes and their Punishments" having been framed in imitation of the more elaborate one of MR. OKE, in chap. ii. of Part II. of his valuable work, "THE MAGISTERIAL SYNOPSIS," and in a considerable measure adapted from it, the Compiler desires in this place to express his obligations for the aid obtained from the "Synopsis," which saved him from much labour in the collation of the Criminal Law Statutes. Some of the earlier copies of this work appeared without this acknowledgment, much to the Compiler's regret.

H. F. P.

TEMPLE, *Dec.* 12, 1870.

PREFACE

TO THE

THIRD EDITION.

ADVANTAGE has been taken of the call for a new edition of this volume to introduce the entire of the Criminal Law, as affected by statute and by judicial decision from the passing of the Criminal Law Consolidation Acts to the end of the last session of Parliament.

By the courtesy of Mr. GREAVES, Q.C., the learned framer of those consolidated acts, the Editors are enabled to add valuable papers from his pen on two often recurring but imperfectly understood questions in Criminal Law: the one, upon the *Power to Arrest without Warrant*; the other, upon the *Law of Attempts to Commit Crimes*. One of the Editors has contributed a short Essay designed to suggest to Judges and Magistrates some principles by which the Punishment of Crime may be regulated, with a view to the bringing about of more uniformity in sentences; and Mr. PURCELL has prepared a Table of Crimes and their Punishments, which will be useful for ready reference.

Temple, Oct. 15, 1870.

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SOME SUGGESTIONS
TO
JUDGES AND MAGISTRATES
FOR BETTER DEFINING THE
PRINCIPLES OF PUNISHMENT.

BY EDWARD W. COX, S.L.,
Recorder of Portsmouth.

IN a speech addressed to the House of Lords, on Friday, April 1, 1870, Lord Penzance thus commented upon the inequality of the punishments awarded by different Courts :

No doubt there is often an impression among the public that sentences are in some cases far too heavy, and in others far too light ; but they are often imperfectly informed, for the newspaper reports, although extremely able and faithful, are mere skeletons of the evidence, and readers of the public prints may very well come to the conclusion that there has been undue severity, whereas if they heard the whole of the evidence they would be perfectly satisfied. Still, no doubt, there is some amount of dissatisfaction with sentences, and particularly with their inequality. That will always be the case so long as Judges have an almost unlimited discretion, and I would not desire to limit it, for it is obvious there may be circumstances of aggravation or extenuation which may call for a light or heavy sentence. In every criminal case, however, two things have to be considered—first, the heinousness or enormity of the crime itself, and, secondly, the particular circumstances under which the prisoner has committed it. Now, the first, one would think, should be determined by the law. Take the case of forgery, burglary, or

rape. One would hold forgery to be the worst crime that could be committed in a highly civilised and commercial community; another would hold that burglary was a much greater crime; and a third might hold that rape was the worst offence of all. Now, if you were to assemble fifteen men, and take their opinions on these separate classes of crime, you would not find them agree; yet this is the question which the fifteen Judges have to determine. In passing every sentence, a Judge has to settle what is the enormity of burglary, forgery, and rape before he investigates how the standard of punishment should be exceeded or diminished in that particular case. If a Judge regards forgery as a crime of the deepest dye, he will invariably visit it with a very heavy sentence; but a Judge on the neighbouring circuit may see in it only a form of robbery or cheating, and every case of the kind will be leniently dealt with. This inequality of sentences is due to the absence of any standard; for if there were a standard laid down, still leaving the Judges the utmost liberty of increasing or diminishing it, it would be felt that in nine cases out of ten the Judges would not disturb it, for the circumstances of cases really differ very little. I venture to say that such a standard would be gladly adopted by the Judges in the large majority of cases, and we should thus obtain something like uniformity of sentences, whereas, under the present system, we may be said to secure want of uniformity, every Judge being left to form his own opinion on the heinousness of the crime. When I first had the honour of a seat on the common law bench I was struck with the desirability of such a standard, which might be obtained either by Act of Parliament, by an Order in Council, or even by agreement among the Judges themselves. There would be no reason why it should not be altered from time to time, as the prevalence of a particular crime or other circumstances might render advisable.

The Lord Chancellor (Hatherley) added :

My noble and learned friend referred, and there I am more disposed to concur with him, to the different temperament of those who are called upon to pronounce sentence on criminals. There are seventeen Judges, the chairmen of quarter sessions, recorders, and others. It would be preposterous, however, to award a strict sentence in every case without the least regard to

the particular circumstances, and if this tribunal is to revise sentences, of how many persons is it to consist, and how are you to secure unanimity? How are you to gauge the feelings of those who are called upon to act? The legal portion of the tribunal might possibly lean in one direction and the lay element in another, and it would be difficult to secure a unanimous opinion.

The complaint is not new, although it has not before been brought so prominently and eloquently to the notice of the public. The fact is familiar to all lawyers who practise in the Criminal Courts and is the frequent subject of comment in legal publications. There is a marked difference in the sentences at the Assizes and Quarter Sessions. If two courts, separated but by a wall, are trying prisoners at the same time, the sentences for offences identical in character will frequently differ widely in degree, and it is found to depend upon the accident of a prisoner being tried upon one side or upon the other side of that wall whether he shall be sent to penal servitude or imprisoned for six months. At the instance of the writer, some years ago, Lord Brougham procured a return to be made of the sentences at a certain number of Quarter Sessions and Assizes; and it appeared that, although the lesser crimes were tried at the former and the greater crimes at the latter, the average number of years of penal servitude and of months of imprisonment inflicted by the former considerably exceeded those inflicted by the latter. Some judges hold severity, others leniency, to be the best policy. Accordingly, a crime which one punishes with six months, another will punish with one month, of imprisonment. From this it is manifest that nothing in the nature of *rule* governs or even assists the judgment in the determination of punishments. They are,

in truth, influenced by more or less of caprice, and the Judge would often be perplexed to state specifically the reasons that determine the sentence he pronounces.

It is evident from this that they to whom is committed the duty of awarding the punishment of convicted criminals have no recognised or definite principles to govern or even to guide their judgment. Is it possible to construct such rules ; for, if practicable, they would be most desirable. That a state of anarchy should exist in a matter of so much importance has been for long a subject of regret with those who both observe and think ; and now that public attention has been directed to the question in the Legislature, it has become more than ever necessary that some endeavour should be made to remove, if it be possible, or at least to diminish, this acknowledged defect in the administration of justice.

But is it practicable to frame anything in the nature of *principles* for the guidance of the judgment in the meting out of punishments ? I have put the question to many Judges who have had more experience than myself, and I have found their opinions to differ widely. Some declare the framing of rules to be difficult and the adoption of them impossible ; others pronounce positively against the practicability of either making or acting upon rules ; a few have expressed belief that rules might be found, or at least some guiding principles discovered. But all are of one mind in admitting that such a work would be of the utmost value, if only it could be executed with even partial success. It is in the hope that the design may not be altogether impossible and that a first step towards establishing something like principles of punishment might be found practicable on trial that I venture to attempt the subject.

I crave indulgence in the performance of the task because of its novelty. I am not ignorant that Bentham has already treated the subject with exhaustive elaboration. But the point of view from which I propose to examine it differs from his. Bentham's treatise is legislative and not administrative. He discourses of what the law ought to be, and not of the manner in which the existing law should be put in force. His great work is the essay of a philosopher maturing a scheme in his own brain for a world of his own imagining, instead of practical instruction how to apply the law as it is to men as they are. That portion of the large question of crime and punishment to which these remarks are directed has been as yet wholly unattempted.

I must, however, desire it to be clearly understood that I pretend to nothing more than *suggestion*. I purpose only an endeavour to propose certain principles, or, to speak more correctly, certain considerations, that may assist the judgment in approximating to a just determination in the award of punishment to criminals. It would be impossible to frame definitions embracing all the infinite variety of circumstances that should be taken into consideration by the Judge, the combinations of which, varying in every case, must needs, more or less, modify his decision.

The following suggestions, then, must be taken as professing to be nothing more than hints for the guidance of the judgment in determining the measure of punishment according to the nature of the offence to which it is to be applied. More than this would be impossible at present, if indeed it will ever be practicable. An attempt was made by "The Habitual Criminals Act," as originally introduced to Parliament

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and sanctioned by the House of Lords, to limit by law the discretion of Judges in the matter of punishment. It provided that two former convictions should in all cases entail a sentence of penal servitude for seven years. Judges, it was contended by its authors, are governed too much by their own feelings, or by fear of unpopularity, and they are more lenient than they should be—or would be, if their judgments were directed by consideration for the suppression of crime rather than by compassion for the suffering of the individual criminal. It would be a relief to them to remove this discretion, and with it the responsibility it entails. But, on the other hand, it was argued that, even if the law were to lay down a hard and fast scale of punishments, it would fail in practice, if opposed to the opinions of the Judge or the prevailing sentiment of the public; for, rather than convict, with consequences to which they are averse, juries would acquit altogether, or judges would invite a conviction for some lesser offence; and so, instead of increased stringency, punishment would be practically lessened. Such has been the experience of the unfortunate law that made seven years of penal servitude the minimum sentence after a former conviction. The consequence of this law has been that, instead of a term of penal servitude appropriate to the offence, Judges are frequently compelled to pronounce an inadequate sentence of imprisonment. These more rational views prevailed in the Commons, and the discretion of the Judges was restored.

But that discretion should not be unlimited. It should be exercised according to some rule, and with some approach to similarity of action. It ought not to be that, for the same offence, a sentence of penal

servitude should be pronounced in one court and of imprisonment for six months in another court. There should be at least an *approach to uniformity*. This can only be secured by recognising certain *general principles*, by which the mind may be directed in the formation of its judgment; and it is in the hope to effect somewhat towards the removal of the existing anarchy, and to bring about more of system in the apportionment of punishment, without too much fettering the discretion of the Judge, that I have endeavoured, in the following pages, to construct a rude scheme of the considerations that should present themselves to the Judge's mind. The subject is new, and this sketch of it is merely tentative. Doubtless, if it should prove useful in practice, it will admit of much extension and modification, and that which is now merely suggestive may hereafter shape itself into definite principles, and take the form of a treatise. At present, I pretend to nothing more than to offer to Judges and Magistrates certain hints, that may or may not assist them in the administration of criminal justice.

And here, perhaps, I may be allowed to throw out another suggestion, with the same object of bringing about greater uniformity of punishment. It is that they who administer the criminal law should hold occasional, or, as I should prefer, periodical conferences upon the subject of punishment. There is a fashion in crime as in other things, and prevalent offences require to be suppressed by exceptional severity. How effective that is was decisively proved in the instance of the crime of garotting, which has almost disappeared under fear of the lash. If the Judges of the Superior Courts

and the Chairmen of Quarter Sessions were to meet once a year, and review the question of crime and punishment, and come to some general resolutions as to the nature of the treatment of the various offences then most prevalent, their combined experience could not fail to bring about an approach to uniformity, and prevent the scandals of which Lord Penzance, with too much truth, complained.

A like conference of the Stipendiary Magistrates would be no less advantageous in producing unanimity of rule in the infliction of penalties in the large summary jurisdiction exercised by them. Their resolves would doubtless regulate, to a considerable extent, the decisions of the unpaid magistracy.

In treating this subject, it is necessary to keep clearly before the mind what are the objects of punishment. These are—

First. To deter the criminal from again offending.

Secondly. By the example of his suffering to deter others from offending in the like manner.

The law has wisely given to the Judges by whom it is administered a very wide discretion as to the precise *degree* of punishment in the particular case which, in their judgment, will best accomplish this double object. Although assigning a certain *kind* of penalty to each kind of offence, the Judge is empowered to vary almost indefinitely the *degree* of that penalty. Prescribing in all cases a maximum of punishment, in a few cases only is a minimum prescribed; and there is now an admirable provision in the Criminal Law Consolidation Acts (24 & 25 Vict. c. 96, s. 117), which empowers the Judge, in indictable misdemeanors, in lieu of punishment, to fine the offender, and require him to enter into

his own recognisances and find sureties, both or either, for keeping the peace.

Perhaps the most convenient plan in treating of this subject, for which I have no precedent, will be to pursue the course of thought naturally followed by the mind of the Judge, when determining the amount of punishment to be awarded after a conviction, and see what considerations should weigh with him in forming his conclusion.

The first matter for deliberation, in considering the measure of punishment, is the *character of the crime*; the second, the *character of the criminal*.

I. THE CHARACTER OF THE CRIME.

The *character of crimes* varies widely. I do not here refer to the general character of the offence in the scale of the Criminal Code, but to the special features of the particular instance of it then under consideration; and these may be conveniently classed in a catalogue, that cannot pretend to be exhaustive, but is merely a rude outline to assist the inquiry and the memory.

1. CRIMES OF WANTONNESS.
2. OCCASIONAL CRIMES AND CRIMES FROM TEMPTATION.
3. CRIMES INVOLVING BREACH OF TRUST.
4. CRIMES OF FRAUD.
5. CRIMES OF PASSION.
6. CRIMES OF VIOLENCE.
7. CRIMES OF BRUTALITY AND CRUELTY.
8. PREVALENT CRIMES.

To each of these it will, I think, be practicable to apply some general rules for guidance, to assist, but not to control, the judgment. For, after everything like

rule is considered, much will commonly remain to exercise the further discretion of the Judge, growing out of the special circumstances of the case, which cannot be anticipated nor provided for.

1. CRIMES OF WANTONNESS.

To this category I refer all those offences that are the result rather of inconsiderate folly than of positive wickedness, and of which the young and thoughtless are commonly the perpetrators. Damage done to persons and property by the misuse of dangerous weapons, by stone-throwing, by indulgence in what are called "larks" (provided they have not in them the ingredient of "malice"), belong to this class. How to deal with them satisfactorily has been always a problem for Judges and Magistrates. A gaol, with its formidable consequences upon the future reputation of those who have been once consigned to it, is a punishment which a reflecting man would be most reluctant to inflict upon a youth just entering upon the struggle of life, and to whom it is certain degradation and possible ruin, especially as the offence is not one that necessarily implies *moral* abasement. The appropriate penalty for such offences, in the case of boys, is that which a father would inflict—a whipping. The remembered smart would be far more effective in reforming bad habits than any amount of imprisonment, and the fear of the like suffering would more effectually deter others from indulgence in the same follies than mere confinement for a few days or weeks. If a youth guilty of an offence of this nature were ordered to be taken to the nearest police-station, there to receive a limited number of strokes with a birch, and then sent

home smarting and crying, the effect upon himself and the example to others would be infinitely more deterrent than the fine or imprisonment which the existing law imposes. But, until the law is amended by some provision to this effect, in cases where the depravity does not appear to have been great, and the offender is young, the better course will be to inform him of his peril, to warn him of the certain consequences of repetition of his offence, and discharge him on his own recognisances to come up for judgment when called upon. Should this leniency fail, as seldom it has been found to do, the offender can be punished with justly increased severity, and in the meanwhile the consciousness that he is on his good behaviour cannot but have a most wholesome effect upon his conduct.

2. OCCASIONAL CRIMES AND CRIMES FROM TEMPTATION.

By these I intend that extensive class of crimes to which persons are prompted by sudden impulse rather than by deliberate design, being induced, for the most part, by facility for procuring the object whose presence prompted the desire to possess it. To this category belong a considerable proportion of the petty larcenies committed by persons who are *not* habitual criminals. Usually the object is to gratify a passion for liquor; sometimes it is to satisfy the cravings of hunger; that, however, being the cause with but a small fraction of the whole body of criminals. To this class belong the petty plunderers, who steal articles of small value, from no motive that can be traced, but doubtless through some insane enjoyment in the exercise of furtiveness, rather than from love of acquisition; a passion which is as difficult of resistance by them as is that of

the drunkard for the draught which as he drinks he knows will destroy him.

When satisfied that the offence was of sudden temptation, and not committed of malice aforethought, and especially if it is a first offence, the punishment should be slight and more by way of warning than of penalty. But the convict should be informed that a second offence will be treated much more severely. In many of these cases the same course of discharge on recognizance to come up for judgment when called upon might be adopted with great advantage, especially where the convict is young or has borne a good character previously.

It is more difficult to determine how to deal with petty plunderers. If really the subjects of disease, the right place for them is an asylum. But if they have fallen into a confirmed habit of picking and stealing, what can be done with them? They are simply incorrigible rogues. The best course, alike for themselves and for the public, would be to treat them as persons incapable of self-control, and keep them under restraint for a very long period of time. But public opinion would not endure the infliction of seven years of penal servitude for stealing a pewter pot, unless the thief was known to be a *professional* criminal, and therefore the Judge is compelled to repeat the often repeated sentence of imprisonment, with absolute certainty that, in a month after his discharge from gaol, the convict will be plundering again. It would be well if, in such cases of *persistent* crime, the law would permit a trial to be made of whipping, which, doubtless, would be more dreaded by criminals of this class than mere imprisonment, that seems to have no terror

for them ; on the contrary, I much doubt if they do not rather like the periodical change in their way of life.

3. CRIMES INVOLVING BREACH OF TRUST.

Offences committed by servants and others in fiduciary capacities, who avail themselves of the confidence they have obtained to facilitate the commission of the crime, involve a double wrong—adding breach of trust to larceny—and punishment should be meted out accordingly. The most frequent form of this class of offences is embezzlement, and it is commonly alleged, in extenuation of the crime, that the temptation is great, by reason of the possession of money, for which the servant has some pressing need, and which he had hoped to repay. As a matter of fact, in the vast majority of cases, the criminal hoped that the loss would not be discovered, and was *not* self-deceived by any distant notion of recoupment. But in any case it is an offence of much higher degree in criminality than either of the two preceding classes. Moreover, the repose of confidence in servants is so unavoidable and so universal that it is absolutely necessary, for the sake of example, to mark the distinction between this and the lesser crime of simple larceny. Where a servant has been concerned in a positive theft of the things committed to his charge, either personally or by aiding others, the offence is greater even than that of embezzlement, for there is less temptation, and it implies more deliberation and art, and should be treated accordingly.

4. CRIMES OF FRAUD.

Crimes that savour of fraud call for much greater severity of punishment than either of the classes of

crime yet considered; for this reason, that they are crimes which in their nature imply deliberation and the exercise of a certain amount of skill, and therefore preclude the mitigatory elements of sudden temptation or ignorance. There is another, and still more potent, reason for treating them with severity. Such treatment is the most likely to operate with peculiar force in these cases, inasmuch as they are crimes of *calculation*, and the risk of the punishment enters directly into the consideration of the intending criminal when projecting his scheme. And if severity in these cases operates powerfully to deter from the crime, it is still more efficient by way of example. In these days of extended education, crimes of fraud are substituted more and more for crimes of violence. Education does not diminish the *amount* of crime to any marked extent, it operates mainly to change the *direction* of crime. The man who desires to procure self-indulgences without working for them—which is the short but truthful definition of a thief—if educated, prefers the surer as well as safer practice of fraud to the personal danger of robbery; and, as education extends, this altered form of the crimes that may be classed under the general name of theft will certainly prevail more and more, and should be dealt with accordingly. These considerations do not appear to have sufficiently presented themselves either to the Legislature or to the Judges in the apportioning of punishment to *crimes of fraud*. Unfortunately, the law has affixed to these crimes the mitigated title of “misdemeanors,” and assigned to them a limit of punishment less than to the offences to which it has chosen to give the name of “felony;” although, in truth and fact, the crimes of

fraud are the most noxious, not only as possessing more of the elements that constitute criminality, but as being more offensive to the community and more difficult to be guarded against by the public and by individuals. In this respect the law itself requires alteration, and fraud should be put into its proper place in the catalogue of crime, as it prevails under the conditions of modern society. But the Judges, in administering the existing law, might do much towards bringing about the required change by more severe punishment in all cases wherein there appears to have been a deliberate design to plunder by a fraud, increasing it in proportion to the amount of skilful planning and calculation employed.

If the frauds have been systematic, long continued, and numerous, this also should weigh heavily in the judgment; and although the conviction be for one or two fraudulent acts only, the sum of all the wrongs done or designed should be taken into account, and the punishment increased in proportion to the artfulness of the offender, as proved by his success and the extent to which he has practised his frauds.

4. CRIMES OF PASSION.

In this class I place all the crimes that are the consequence of some sudden excitement of the passions, and which do not savour of malice aforethought, or were not committed with deliberation. The greater portion of these offences fall under the next division also—that of Crimes of Violence—but this latter includes much that would not come within the present class, and, therefore, the two are separately considered.

Manifestly these offences are wanting in that most

important ingredient in the estimate of criminality—deliberate design and calculated chances. It is likewise doubtful if punishment has much influence either in reforming the criminal or in deterring others. The temporary mastery of passion over reason, which extenuates the crime, in itself excludes the element of design, and therefore punishment should be as nearly as possible *preventive*. But the difficulty in this case, as in so many others that present themselves in considering the question of crime and punishment, arises from this,—that the injury done is not a measure of the moral guilt. For instance, a man in a momentary fit of passion strikes another with a knife that chanced to be in his hand at the time of the provocation received. Fortunately he cuts where the wound is harmless; but, had the knife gone to the right or left it would have severed an artery and caused death. The motive, and therefore the moral guilt, of the assailant, would be the same in either case; but the law makes a necessary distinction which those who administer it are bound to observe. A very different measure of punishment is meted out accordingly as the wound had been harmless or destructive. But I must confess myself at a loss for an intelligible principle by which the proper extent of punishment should be determined in such a case. The lesson to be taught is, that if a man uses a weapon for an unlawful purpose, he must take the consequences that may possibly result from indulgence of passion. It is undoubtedly essential to the safety of society that passion should not be accounted as an excuse for a great injury done to another, and that this should be publicly notified by the sentence; but it has often occurred to me that *after sentence* there should be a classification

of criminals; that the carrying out of that sentence should be with reference to the *moral* guilt of the offenders; and that crimes of passion, which do not necessarily imply moral depravity, should not be treated in the same manner as crimes which, in their very nature, involve *moral* degradation. The object of punishment in the one case is restraint and example; the objects in the other case are seclusion from evil associations and habits, example, and reformation.

Where no serious wrong is done to the injured party by a crime of passion, the fact of its having been unpremeditated may fairly be taken into consideration, and the punishment modified accordingly.

5. CRIMES OF VIOLENCE.

The first object of legislation is personal security, and therefore severe punishment is always and everywhere affixed to this class of crime.

Some of the offences that would properly belong to this division, as being crimes of violence, would be transferred, when prompted by passion, to the class of crimes last treated of, and therefore are excepted from this division, which relates only to such acts as cannot plead the mitigation of sudden provocation.

And in legal as in moral estimation, the crimes of this class range from comparatively slight degrees of turpitude to the greatest of all crimes—deliberate murder.

I have used the term “comparatively slight” for want of a better phrase to express my meaning. But no crime of violence, not having the excuse, such as it is, of sudden passion, can be treated otherwise than as a grievous offence. The security of person is the foremost purpose for which law exists; the security of

property is but the second. The employment of force to obtain some object of desire, or to avenge some real or supposed wrong, is an open defiance of authority that calls for severe punishment, apart from the extent of the injury done to the object of that violence. Multiplied, it would destroy society itself. The *first* item in the estimate of punishment in such cases is the degree in which the character of the crime shakes the security of the community. The *second* is *the motive* with which the injury was done. This is an ingredient in the offence to be considered quite apart from the amount of injury actually done; a slight blow inflicted with an intent to murder is more criminal than a severe blow inflicted with design only to commit a common assault.

The *third* ingredient in the measure of punishment of a crime of violence is the injury actually done. A great hurt would aggravate the offence, though the intent was to inflict only a small hurt, he who resorts to illegal violence being rightly made responsible for the consequences of his wrongful act, even although those consequences were not intended. But though the actual injury not having been intended cannot be received as an excuse, it may fairly be considered in mitigation of punishment.

Where a crime of violence is committed in the course of committing another crime, there is a rule which the Judge may take for his guidance in determining the sentence. He should bear in mind that he is to punish *two* offences—the original offence and the crime of violence that has been superadded. The proper sentence may not be in all cases the doubled punishment, but the double wrong should be taken as the amount *ex debito*

justitiæ, from which deduction may be made according to the special circumstances that modify guilt.

If the act of violence was premeditated, or instigated by pre-existing motive of vengeance, jealousy, hatred, or other malignity, it should be punished with a severity proportioned as far as possible to the nature and extent of the evil passion that prompted it, and especially in reference to the time during which the design appears to have been cherished. The moral turpitude of crime increases immensely with the period during which it has been hatching in the mind of the criminal, because his opportunities for self-control and repentance have been greater, and the punishment should mark this distinction to himself as to others.

Crimes of violence committed against the law itself, in the persons of those by whom it is administered, demand exemplary punishment, because they endanger the safety of the entire community. The particular wrong is to the individual injured, but the greater wrong is to the whole public; and although but one policeman's head has been broken, the security of all men's heads has been shaken by that act. Hence it is that assaults upon constables in the execution of their duty are rightly held, in all civilised lands, to be offences of very grave magnitude, calling for condign punishment, in order to deter, by example, those who might be inclined to offend in the like manner, and thus to throw around the officers of justice the utmost protection possible in the courageous performance of their difficult and dangerous duties. Punishment in such cases is to be measured, *first*, by the injury done to the individual; to which should be invariably super-added, *second*, the further punishment due for the

injury done to the public by the attempt to deter its officers from protecting it; and *third*, for the defiance shown to the law. If these ingredients in the crime were taken properly into account, brutal assaults upon policemen would be more severely dealt with by Judges and Magistrates than is their practice now, and the result would certainly be seen in a marked diminution of this increasing crime. Perhaps it would be a just and wholesome rule in all such cases to *double* the punishment that would have been inflicted for a similar unprovoked assault upon a private person. If the violence is further complicated with a rescue, or attempted rescue, of a prisoner from actual custody, the crime is yet more aggravated, and demands the punishment of a *triple* wrong—viz., *first*, the injury to the man; *second*, the injury to the public through its protectors; *third*, the defiance of the law by the rescue of its prisoner.

Crimes of violence committed from mere *lawlessness*, such as those by which “the roughs,” as they are termed, with growing audacity have made many parts of the metropolis and of our great towns unsafe for the well-dressed and well-behaved, surely require to be visited with more severity of punishment than they have yet received. From no crime would offenders be more readily deterred by example—none is so easily encouraged by impunity. In crimes for gain, the criminal stakes the chances of success against the chances of failure and punishment; but in crimes of mere lawlessness there is no hope of profit to be staked against the chance of pain; and even the brutal natures who indulge in this offence are conscious that they may pay too dearly for their amusement.

The considerations that should regulate the judgment

in this class of crimes, where the violence was in pursuance of another crime, are :

First. The *nature of the crime* in pursuit of which the violence was committed.

Second. The *motive* with which the violence was done.

Third. The extent and nature of the *injury done* to the person subjected to that violence.

The other crimes of violence, in which the violence was the primary object of the criminal, are sufficiently stated above and need not recapitulation.

7. CRIMES OF CRUELTY AND BRUTALITY.

I place these in a separate class from crimes of violence, because, although they involve violence, they have a further ingredient of criminality that demands additional punishment. The essence of these offences is the *intention to inflict pain*, too commonly from a horrible pleasure taken in the infliction, but sometimes from mere brutal thoughtlessness and disregard for the feelings of others.

For this class of offences the obviously appropriate punishment would be the infliction of bodily pain upon the criminal, as nearly resembling the nature of the pain inflicted by him upon his victim as circumstances reasonably permit. But to this conception of punishment our law has not yet advanced and Judges can deal with crimes of cruelty only as the present imperfect law directs. As cruelty is not punishable with flogging, and brutality is not permitted to be treated as brutes can only be governed, by fear of pain, the sentence in such cases should at least indicate by its severity the public abhorrence of the crime. Never should it be condoned by a *pecuniary* penalty,

which is appropriate only to offences that savour more of the nature of civil wrongs than of crimes ; but to the punishment that would be awarded to the act of violence, a very considerable measure should be added for the inhumanity of the motives that prompted it.

8. PREVALENT CRIMES.

There is a fashion in crime as in other things. Judges and Magistrates are continually reminded, by the calendars at the Assizes and Quarter Sessions, that not only are certain offences preferred by the criminal class at certain seasons of the year, but that there is among that class a strong tendency to imitation, inso-much that any crime greatly talked about, or made prominent in the newspapers, forthwith becomes the fashion among the criminal class. The *rationale* of this was well illustrated to me some years ago at Exeter. The crime of arson had prevailed to an alarming extent in Devonshire, without any assignable motive of discontent or vengeance. I was curious to learn the cause of this, and when defending some of the criminals, all of whom were farm servants and the majority of them young girls and boys, I requested them to tell me frankly what induced them to the act. Similar answers were given by all. " I heard talk of the fires about, and then I wanted to try and see if I couldn't make one too, and it come into my mind till I couldn't help doing it." This was a real monomania in a non-criminal class ; but it reveals the process by which fashion in crimes is created. The attention of the criminal is strongly directed to certain crimes by frequent mention of them in the newspapers ; the thought of them occupies and

haunts the whole mind, until at length there is an irrepressible impulse to act out the thought. Many are made criminals by reading about crimes in publications like the *Police Gazette* and other periodicals that supply what is truthfully called "Thieves' Literature;" and hence it is that the calendars usually show a marked fashion, for the time being, in favour of some particular crime or crimes.

The prevalence of certain crimes is, therefore, an important ingredient in the measure of punishment, and entitled to quite as much consideration as the other ingredients named above. Experience proves that such fashions in crime are speedily and effectually controlled by visiting them with special punishment. Being the consequence of example, they are influenced by example; and, therefore, exceptional severity, declared by the Judges to be designed because of the prevalence of the crime in question, will be found rarely to fail in suppressing it, or at least in restoring it to its normal quantity.

So much for the treatment of *crimes*. I now come to the considerations in relation to the circumstances that affect the CRIMINAL, which should more or less sway the judgment in determining the measure of punishment.

II. THE CHARACTER OF THE CRIMINAL.

For this purpose of punishment, Criminals may be divided into three great classes:—

1. THE OCCASIONAL CRIMINAL.
2. THE HABITUAL CRIMINAL.
3. THE PROFESSIONAL CRIMINAL.

Each of these classes requires different treatment.

It will be observed that I have distinguished the

"*Habitual*" from the "*Professional*" criminal, although no such distinction is recognised by the law, all offenders belonging to these two classes being by the statute placed in one category under the title of "*Habitual Criminals*," and, as such, subjected to the same treatment.

Having a decided opinion—the result both of experience and reflection—that there is a definite distinction between these two classes of criminals, requiring a difference in the award of punishment, which the Judge may properly exercise if he should approve the views here set forth, I venture to suggest the distinction that has so strongly presented itself to my own mind.

The test of being an *Habitual Criminal*, as recognised by the statute, is that he has been previously convicted; and if a criminal has been so convicted, he is thereupon deemed to be an *Habitual Criminal* and treated accordingly.

I dispute both of these presumptions. With all respect for the authorities, I submit that previous conviction is neither sufficient, nor even presumptive, proof that the convict is an *Habitual Criminal* within the *intention* of the law; that a former conviction is not a sufficient test of "*Habitual*" crime, and that the punishment which was intended to apply to those who make a *business* of crime is, by this rude classification, practically extended to many for whom it was not designed and to whose cases it is in fact inappropriate.

Having cast about for a fit name by which to designate the class to whom "*The Habitual Criminals Act*" was *intended* to apply, I can find nothing better than the term "*Professional Criminal*," which carries to all minds the precise conception it is intended to

convey. The professional criminal is one who makes crime his calling; who is educated for it and lives by it, precisely as the doctor or the lawyer lives by *his* calling. He and his pursuits are as commonly known to the police as those of any apothecary with a blue light over the door. He lives in recognised and well-defined thieves' quarters, precisely as do the French in the neighbourhood of Leicester-square or the Solicitors in Bedford-row. The entire body of the professional criminals could be caught and imprisoned in one morning. A class so definite and so readily identified might well be made the subject of distinct legislation, and it is greatly to be regretted that they should have been in any manner confused with another class with which they have but little in common.

Professional criminals are concentrated in the metropolis and a few of the largest cities and towns. The rest of the country knows little of them, save when they make occasional predatory raids into the provinces for business, pleasure, or health, or for all of these together. But in the towns, outside the quarters of the professional criminals, and everywhere in the country, are a considerable number of criminals who, although they may have been previously convicted of petty thefts once, twice, or even many times, are nevertheless *not professional* thieves—that is to say, they do not make plunder their business, but *habitually* earn a livelihood by work, and are only weak to resist temptation, especially when prompted by a desire for drink or other self-indulgence. To treat such offenders as we would, or should, treat professional criminals is an abuse of words, an ignoring of facts, and, were Judges to sanction it, would certainly prove a great in-

justice and bring the criminal law into not undeserved disrepute.

For these reasons I trust to have satisfied the reader, that, *for the purpose of punishment*, it has been rightly recommended to him to recognise *three* classes of criminals, instead of two, as proposed by the existing law.

1. THE OCCASIONAL CRIMINAL.

By this term—not a very satisfactory one, I must own, but adopted for lack of a better—I refer to a class which embraces all those offenders who appear to be such from sudden impulse or great temptation of need or of opportunity; who are not criminals by *calling*, and whose crimes do not exhibit great moral depravity, or any of those features of aggravation which have been considered in the foregoing review of the various *characters* of crimes.

I cannot too earnestly urge leniency in the treatment of offenders of this class. A first offence should always be looked upon with pity, as possibly a lapse from virtue, the result more of weakness than of wickedness. As in such a case repentance and reformation are always possible, punishment should be rather by way of warning than of penalty. Opportunity should be given to the criminal to redeem his lost reputation, but with emphatic warning that mercy will not prevail a second time, and that if he sins again in like manner his punishment will be doubly severe. In many of such cases the Judge might beneficially adopt the course of simply putting the convict under recognisances to come up for judgment when called upon, notifying to him that, if he continues in good behaviour, he will hear nothing more of the matter; but that, if he again offends against

the criminal law in any manner, he will be brought up for judgment and punished with the greater severity for the offence of which he has been now convicted. The obvious advantage of this course is, that it operates more powerfully than even police supervision to keep the convict in good behaviour. The leniency thus shown to him rarely fails to have some influence in restraining him from relapse into crime. Even if it do not induce reform, the knowledge that if he offends in anything he will be punished on a conviction already secured, with none of the chances of escape that attend a new prosecution, will certainly operate as the most powerful check upon him when tempted again to err.

2. THE HABITUAL CRIMINAL.

This class of criminals, defining it as above, is by far the most perplexing for those who administer criminal justice. The hard and fast line proposed as a test by "The Habitual Criminals Act," as sent from the House of Lords, namely, two previous convictions, which were to be followed rigidly in all cases with seven years of penal servitude, would have wrought such an intolerable wrong that juries would have refused to convict and Judges would have taxed their ingenuity to find holes for escape from a law so indiscriminate in its operation. Judges and Justices are continually perplexed how to deal with the petty plunderer, who is not a thief by profession, who works, perhaps, at an honest employment, who would not commit a great crime, but who appears to be unable to resist the temptation of appropriating things of small value that he chances to find unprotected. Penal Servitude for seven years is a punishment so manifestly disproportioned to the nature

of the crime and the character of the criminal, that it would shock the public sense of justice and bring odium upon the law itself. Yet have short imprisonments been tried upon him in vain. It is certain that, as soon as he is released, after a confinement of two or three months, the old habit will be resumed. The real remedy for such an offender, who cannot exercise sufficient self-control to keep his hands from picking and stealing, would be to place him under restraint for a long term, and compel him to work ; treating him, after a limited probation, not as a convict, but as a labourer for the public, under the control of the servants of the public. But until a more rational system of punishment is provided by the Legislature, Judges and Magistrates can only administer the law as it is ; and the best chance of cure at present provided is an imprisonment long enough to loosen, if not to sever, evil associations, to disturb old, and to implant new, habits. Penal servitude, as contemplated by the original bill, would probably be a better punishment in many of such cases than mere imprisonment ; but the nature and uses of such a treatment of habitual offenders are not sufficiently understood by the public to prevent the shout of indignation that would be raised if a criminal were sentenced to seven years of penal servitude (that being the least term which the statute permits to be awarded in case of a former conviction) for some petty theft, even although the prisoner had been twice, thrice, or more often still, previously convicted of similar petty thefts and suffered many short terms of imprisonment, but is not a *professional* criminal.

3. THE PROFESSIONAL CRIMINAL.

There ought to be very little difficulty in dealing with this class of criminals. Educated to crime, living by crime, they commit crime systematically, deliberately, with malice aforethought, calculating carefully the proportion which the chance of profit bears to the risk of detection, capture, trial, conviction, and punishment—all of which are taken into the account. A Professional Criminal is never, or very rarely, reformed. In his mind crime is no sin. No self-reproach follows him; no conscience pricks him. It is his *business*. He fights with justice and its officers as his natural enemies, whom to defy, to evade, to defeat, is a boast and not a shame. He weighs the value of his prize against the risk of penal servitude, and if he is caught calls it his ill-luck and hopes for better luck next time. He calculates on spending a certain proportion of his life in a gaol, and adapts himself to that condition, making his prison residences as comfortable as he can by good behaviour while there, and compensating for his forced temporary abstinence by revelling in every sensual pleasure when he is again at large. Reformation with such a man is hopeless. Punishment, at least, such as it is now, does not deter him, because it is his business to hazard it—precisely as the soldier does not shrink from the service, although he knows that he must face the chance of wounds and death. It is his profession to risk his life, and he does it. It is the profession of the thief to risk his liberty and he does it.

When, therefore, the Judge is satisfied that the prisoner is a *professional* criminal the course is plain.

Mercy is wasted on such a man ; leniency is of no advantage to the convict and it is an injustice to the community. The effect of a short imprisonment is merely to send back the plunderer to prey upon society for a time, to be again returned to the dock after he has run up a new score of offences and probably educated a new race of thieves to assist and to succeed him in his business. Penal servitude should be inflexibly awarded to a convict of this class, the object of that punishment being to restrain him for the longest possible period from the exercise of his nefarious calling, and to make it more difficult for him to follow it after his release ; for we may be assured that, come when it will, his profession of preying upon the public will be resumed with doubled zest after a long abstinence.

The only care required in these cases is that the Judge should be *assured* by due inquiry that the prisoner is really a "*professional*" criminal. This may be ascertained in two ways ; first, by the character of the offence itself ; secondly, by inquiry from the police.

1. By the nature of the offence. Certain crimes require an education for their successful accomplishment and therefore the presumption is that the practitioner of them is a professional criminal. Such are, burglary effected with burglarious instruments, or in any manner showing the exercise of a considerable degree of skill ; pocket picking, dexterously done, with the aid of accomplices, or where the coat worn has false pockets, or upon the prisoner being found the scissors commonly used in the commission of that crime ; or his hands showing by their softness that they have not been employed in manual labour ; or, the place where done,

as at a railway station, a theatre, a race, a fair, or other locality where professional pickpockets usually ply their trade; the possession of skeleton keys, picklocks, and instruments used for housebreaking. Indeed, wheresoever there is a conspiracy of two or more for the purpose of committing the offence, the reasonable presumption is that the convict is a *professional* criminal, at least sufficiently to call upon him to show, by some satisfactory evidence, that he has been in honest work; that he is not, as he appears to be, living by crime, but is only an occasional criminal. Receivers of stolen goods especially belong to this class; they are not merely criminal themselves, but they tempt others into crime. If, upon inquiry, the Judge is satisfied that the convict is an habitual receiver of stolen goods, penal servitude should be inflexibly awarded.

2. If none of these *indicia* appear, the police of the district where the prisoner dwells, or which he frequents, should be asked as to their knowledge of him. Does he associate with thieves? Has he any honest calling? Who was his employer, if any? Such questions will probably elicit sufficient of his past history to enable the Judge to form a safe judgment whether the convict is a *professional* criminal. But where such an inquiry is made, justice to the prisoner requires that he should be permitted, and indeed invited, to answer the facts stated against him by any explanation he can offer, personally or by witnesses, and if he refers to known persons in refutation of the charge of being a professional criminal, further inquiry should be made by the police before his sentence is determined—and judgment should be deferred for that purpose.

In reference to this class of criminals, I ventured to

recommend that the indictment should charge the prisoner with being a professional criminal, precisely as it now charges a former conviction; that, after conviction for the particular offence, the jury should try the charge of his being a professional criminal, precisely as it now tries the question of a former conviction; that the jury should hear the proof of this charge by the prosecution, and also the prisoner's answer to it, and find a verdict thereupon, and that the punishment affixed to the crime of which he has been convicted should then be increased accordingly, from a penalty, designed mainly to operate as a warning, to one that is designed to operate by way of long restraint.

The reasons I have ventured here to urge for the treatment of professional criminals with exceptional severity, even on a first conviction, with the avowed object of excluding them for a long term of penal servitude from the community which they both plunder and corrupt, have received a remarkable confirmation in the very instructive report of Colonel Henderson on "Metropolitan Crime," issued since the above remarks were written. I find the substance of that report so well condensed in an article in the *Quarterly Review*, that I extract the passages relating to the subject of professional criminals:

That criminals pursue their trade as a regular calling is clear from the number of recommitments every year. The thief who has been once in gaol is almost certain to reappear there. He is not deterred by the so-called "punishment" of the model prison, in which he enjoys food, warmth, and clothing, provided for him at the public expense. So he is no sooner set free than he at once recommences the practice of his vocation. The police had captured him before and handed him over to justice; but after a short term of absence justice restores him to society again.

Another round of thefts or burglaries follows; the police catch him again; and again he is handed over to justice, to travel in the same circle of imprisonment, restoration to society, and renewal of burglary and crime. . . .

These receivers of stolen goods are among the greatest encouragers of crime. They are not only as bad as the thief, but worse. They educate, cherish, and maintain the criminal. The young thief begins by stealing small things from stalls, from shops, from warehouses; or he first picks pockets in a small way, proceeding from handkerchiefs to watches and purses; always finding a ready customer for his articles in the receiver of stolen goods. And when a skilled thief gets out of gaol, without means, the receiver will readily advance him 50*l.* at a time, until he sees his way to an extensive shoplifting, from which he not only gets his advance returned, but a great deal more in the value of the stolen goods. The number of detected receivers of stolen goods committed for trial in the metropolitan district for the five years ending December, 1868, was 642; being an increase of 38 on the preceding period. . . .

The police acknowledge, for it cannot be denied, that there is a large class of known thieves abroad—men skilled in burglary, who pursue it as a regular calling. But are the police responsible for these men being at liberty to pursue their nefarious industry? “Why don’t the police catch the burglars?” ask the public. The police reply that they have caught these habitual criminals again and again, and handed them over to “justice;” but that justice has again and again let them loose to rob and plunder as before. “Why do not the police catch the portico thieves?” The reason is that these portico thieves, as well as the skilled burglars, are all old, trained, and repeatedly caught and convicted criminals, who, after each successive capture by the police, came out of gaol with an increased degree of cunning and circumspection, rendering them not only more dangerous as thieves but more artful in evading detection and apprehension. The question which should be asked is, not “Why do not the police catch the burglars?” but “Why is it that confirmed and habitual criminals already repeatedly caught and convicted are let loose upon society to pursue their known profession of plunder?”

The total number of criminals committed to prison throughout England and Wales, in 1868, was 158,480. Of these, 21,189

had been in gaol once before; 9263 twice; 5213 three times; 3557 four times; 2438 five times; 2933 seven times and above five; 2427 ten times and above seven; while 4488 had been in prison more than ten times! The worst thieves and burglars were those who had been in gaol the oftenest. Not fewer than 1343 were re-committed in 1868, who, on previous convictions, had been sentenced to transportation or penal servitude because of burglary, in some cases accompanied by violence; and yet they were again found at large, committing the same crimes, and were again apprehended by the police, and again handed over to justice as before.

It is the same as regards the worst criminal class of the metropolis. Of the 21,498 criminals convicted in metropolitan Courts during the seven years ending 1868, 2628 were *recognised** as having been twice before in custody for felony; 391 had been three times; 70 had been four times; and 16 had been five times and upwards. Yet the number recognised probably forms but a small proportion of those who have undergone previous imprisonments. Many old and habitual criminals are not recognised at all, because their previous convictions occurred in other police districts, from which they removed because already too well known there; and even in the case of such as have before undergone sentences in metropolitan prisons, identification is not always easy.

The old and hardened criminals, with whose faces the police have come to be so familiar, are, without exception, the worst and most dangerous class of the community. They pursue crime as a vocation, and train up young thieves to follow in their footsteps. Hating work, but loving debauchery, their whole time is spent in contriving how to live upon the labour of others. They think of nothing but picking pockets, robbing warehouses, and breaking into dwellings. These are the people who keep society in constant alarm, and nervous women and children in a state of nightly terror. These accomplished scoundrels, who have taken every degree in thieving, and

* "To meet the risk of being recognised and its consequences" (says the Ordinary of Newgate, in his recent letter to Lord Kimberley) "old offenders change their names, age, trade, religion, condition, and the particulars of their education,—in fact, every circumstance; and many old offenders, notwithstanding the great aptitude of Sessions officers for their duties, by these tricks escape perhaps not recognition, but *legal identification*."

advanced from area-sneaking to shoplifting, until they have graduated as first-class cracksmen, and are at perpetual war with the honest part of society. They have been repeatedly apprehended by the police, and as repeatedly set at liberty; and when another robbery occurs, because the police do not immediately succeed in apprehending them—skilled as they have become in the art of evading detection—loud outcries are raised of “Where are the police?”

It is not the police who are really in fault, so much as that tenderness for scoundrelism of all kinds that has become one of the pervading follies of our time. Modern philanthropy has so busied itself in ameliorating the condition of criminals that the condition of the thief has come to be almost more tolerable than that of the honest working man. We have abolished the severer punishments, done away with transportation, and provided comfortable houses of detention, where convicted criminals are better housed, clothed, and fed than the average of city mechanics. We do not, as we once did, send our convicts to forced labour on unoccupied land in the colonies, but we get rid of our skilled workmen instead, sending them off in ship-loads abroad, and keeping our thieves and criminals at home. Indeed, it is scarcely to be wondered at if the honest poor man, struggling to keep out of the devil's ranks, and taxed all the while to maintain the scoundrel class, should begin to think, with Dean Swift, that honesty must, after all, be derived from the Greek word *onos*, signifying an ass.

The convicted criminals have now had every consideration shown them; but the question arises whether some consideration is not also due to those who are robbed, as well as to those who rob—to the wives, daughters, and children of the rate-paying and non-burglar part of the community, who are kept in constant terror by their depredations. It is notorious that the worst crimes of late years have been committed by criminals out of gaol “on licence,” who have been taken red-handed with their tickets-of-leave upon them! Yet the men who are let loose upon society with those tickets-of-leave are almost invariably the most hardened and habitual criminals. “The principle,” says the Ordinary of Newgate, “upon which licences are regulated at present is this: he who can do most work, and who conforms most entirely to the prison rules, is he who

receives most mitigation of sentence. And who is he? The *old criminal*, who has served an apprenticeship to the work and discipline of prison. . . . My own conviction is, that as a rule (and the exceptions are very rare) mercy is never more undeservedly shown than to a prisoner who has been previously convicted."*

The tenderness for crime which has grown up of late years has become extraordinary. The common working man, who pays his way, and struggles with difficulty to keep himself and family out of the workhouse, excites comparatively little interest. But, let an atrocious murder be committed, and the whole country is roused to rescue the criminal from the gallows. The burglar may not murder, or intend to murder; yet he is no less the sworn enemy of society. But we have ceased to hang him; we no longer flog him at the cart's tail; we have ceased to transport him; we make him as comfortable as possible in the model prison we have built for him; and we even cut short the term of his imprisonment there and let him loose again upon society with his ticket-of-leave to recommence his depredations. . . .

"Humanity should be exercised" (says the Ordinary of Newgate) "rather for the protection of those who keep the law than for those who choose to break it; for, in nine cases out of ten, *it is choice, and not necessity, that leads to crime.*"†

As regards the repeatedly-convicted and habitual criminals, we hold that something more is needed for the security of society than confining them in well-warmed, well-ventilated, well-regulated model prisons for a few years, and then setting them free to pursue their vocation of crime. It used to be said by the advocates of the abolition of capital punishment that the worst use that could be made of a man was to hang him; but surely it is a still worse use to make of a man who has become a hardened and habitual criminal‡ to let him loose upon society,

* Report of the Rev. J. E. Lloyd Jones, Ordinary of Newgate, to the Lord Mayor and Aldermen, 1868.

† Letter to Lord Kimberley.

‡ In a letter addressed by the Rev. Mr. Lloyd Jones to Lord Kimberley (11th March, 1869), the following passages are worthy of note:—"The greatest difference rests, morally and religiously, between those who are not and those who are habitual criminals. To treat these latter from a humanitarian point of view, securing them from the stigma of *their own vicious choice*, is inflicting a great wrong upon society, and exposing it to great danger. An habitual criminal *may* reform, but, with the greatest

after numerous convictions, to resume his vocation of plunder and educate others in criminality.

Why should incorrigible thieves and irreclaimable burglars be left at large? We shut up lunatics for life because they are dangerous to society; but liberate confirmed and habitual criminals who are infinitely more dangerous. Such men have clearly forfeited all claim to personal liberty. Their repeated convictions have proved them to be a constant source of danger to society. We have ceased to banish them; the only remedy that remains is continuous incarceration, with compulsory productive labour. Thus only can society be effectually protected from the injuries and terrors which habitual and irreclaimable criminals inflict upon it.

These facts and figures speak for themselves. I can but repeat the expression of an earnest hope that they will receive from the Judges by whom the criminal law is administered the thoughtful attention they deserve, and that the result will be a conference and an agreement to look upon *professional* crime as an evil only to be eradicated by treating the *professional* criminal as a foe to the community, who cannot be reformed or reclaimed, and whom therefore it is both wise and just to deprive of his powers of mischief by a long term of restraint; and this, not merely for the protection of the public from his depredations, but also for the purpose of making his profession unprofitable and breaking up his haunts, associations, and habits.

And inasmuch as, according to the common consent of all who are best informed, he returns invariably from the gaol to his work of plunder and training of youth

advantages, he rarely does. I could give your Lordship instances of habitual criminals being in good situations, when their former course of life is not known, who have availed themselves of the opportunity to concoct plans for extensive robberies; for which purpose they have corrupted their fellow workmen who, till then, had been honest men. . . . I could give your Lordship some valuable information, derived from old convicts sent to prison again for fresh crimes *planned just before their release, from information they had received from fresh arrivals at the prison when they had finished their sentence.*"

to crime, the "one chance more" that should be given to all other criminals on a first conviction should be refused to him, and his career of crime at once stayed for a longer term than any sentence of mere imprisonment will secure.

The single requirement for the adoption of such a policy by the Judge will be to take all needful precaution, by careful inquiry, to be assured that the convict is *really* a *professional* criminal. If this be denied by the convict, his counsel, or his friends, let sentence be deferred to enable him to produce some satisfactory proof that he is not what he is asserted to be, but has been pursuing some honest employment.

And in passing sentence of penal servitude because the convict is deemed to be a *professional* criminal, the Judge should expressly state his reason for the sentence; so that if by any mischance there may have been a mistake as to this, application may be made to the Home Office for a mitigation of the sentence, should the convict be enabled to show that he has been wronged by the representations made of his character and pursuits.

There yet remain a few other conditions affecting the *character* of the criminal, which should be weighed in the determination of his sentence.

1. AGE.—Every humane Judge or Magistrate must feel extreme reluctance to send a young boy or girl to a prison. The alternative of the reformatory or industrial school presents itself, but these are not adapted for all cases. Young persons thoughtlessly commit occasional acts of crime without being necessarily so morally degraded as to require the discipline of five years to implant or restore the moral sense. It would

be unjust to the ratepayers to relieve some parents from the duty of supporting and teaching their children, for whom, therefore, five years in a reformatory, at the public cost, is not the right treatment. A prison, if not in itself a contamination, is a stigma that attaches to a boy for life. How, then, to deal with him? If his offence is a felony, let him be whipped and discharged. But if it be a misdemeanor, or if he is just beyond the age to which whipping is so unwisely restricted, what then shall be done with him? This is a problem perplexing to Judges and Magistrates, which the Legislature should solve by extending the offences for which, and the age at which, boys might be whipped. As for girls, it is difficult to say how they can be treated. A gaol is ruin; whipping is impossible; reformatories are few. Here, as commonly in the case of young persons who do not appear to be hopelessly depraved, discharge on recognisances to appear for judgment when called upon is often the most efficient course, for it holds over them a long and powerful security for good conduct, likely to be far more efficacious in restraint than would have been an imprisonment endured and ended, the shame of it gone, the stain of it remaining—a Cain's mark for life.

2. **SEX.**—Although the crime may be the same, it is found in practice to be impossible to adjudge the same degree of punishment to women as to men. This difficulty, continually confronting every Judge and Magistrate, is doubtless rather sentimental than rational. No reason can be advanced for a distinction, which nevertheless is made in practice, and neglect to observe which would be severely blamed by the public. Hence it is that, while a third or a fourth

conviction properly consigns a male thief to penal servitude, many more convictions will not always suffice to bring down the like sentence upon a woman. This is probably due to the terms "hard labour" or "penal servitude," in which the sentence is conveyed; and although no compunction is felt by any—Judge, spectator, or newspaper—at the infliction of labour however hard, or servitude however penal, on an incorrigible rascal who lives by plunder, all are averse to condemn a female reprobate to punishments so described. Sometimes it is argued that the same sentence in terms would be a different punishment in fact, as applied to a man or to a woman. But this is an error, arising from ignorance of the manner in which convict prisons are conducted. "Hard labour" applied to women is such labour only as is adapted to her sex; and while men are set to toilsome tasks, women are employed only in washing, sewing, cooking, and such employments as are suited to them and which honest and industrious women pursue as their ordinary daily duties at home; so that, in fact, the real punishment of female convicts is not the hardness of the labour but the restraint and discipline to which they are subjected. In all populous places, and in the metropolis especially, there are many women who spend more of their lives in a gaol than out of it. Surely mercy so called is not mercy in such cases. A short imprisonment is absurd. As soon as the convict is free again she resumes her old habits. For such women the truest mercy is to lock them up, keep them employed, and make the repetition of crime impossible by depriving them of opportunity and temptation. After a fair trial given to short sentences of imprisonment, if these fail to secure honesty,

the rightful sentence will be to remove them from the community on which they systematically prey for so long a time as to afford some chance of breaking, by that disciplined life which penal servitude only can secure, the chain of evil habits and associations by which they are bound to a life of crime. Where it appears that the female convict is an accidental and not an habitual offender, especially if she be young, it is politic as well as merciful to save her from the ruin too often consequent on the moral degradation of a gaol; and if the employer can be persuaded to take her again into his service, or if any friend or relative will undertake to keep watch upon her, it will be by far the better course to put her upon recognisances to appear for judgment when called upon, with a warning, as before suggested, that if she offends again she will be doubly punished for what she has now done.

3. **THE TEMPTATION.**—Criminality is really measured, in some degree, by the amount of temptation to which the criminal was exposed. It is impossible to lay down any rules by which the various shades of temptation can be defined. It will be enough to remind the Judge that it is an element in the estimate of guilt, to be taken into account in apportioning punishment.

4. **IF A FIRST, OR REPEATED, OFFENCE.**—This, though the last, is perhaps the most important, matter for consideration in relation to the criminal; for he who has had so emphatic a warning as a trial, a conviction, and punishment, can plead none of the excuses which may be properly urged in behalf of first offenders. His criminality is, indeed, very largely increased by the fact that he is an old offender, even although the particular crime with which he is now charged may be in itself

a lesser crime in degree than that of which he was formerly convicted. Hence it is that the law properly makes the fact of the committing of a crime after a previous conviction an offence in itself, apart from the particular character of the new offence, and visits it with a severe punishment, in addition to the punishment that would have been awarded to the crime of which the offender is now convicted. To so great an extent is this principle recognised by the law that, on a second conviction, the court has no option, if it sentences to penal servitude, but to inflict it for seven years. Certainly there never was a law that more entirely defeated its own object. It was designed to increase the severity of punishment for old offenders. By compelling a sentence of not less than seven years of penal servitude, it has forced upon Judges, conscious of the excessive severity of such a sentence in many cases, the alternative of inflicting an inadequate penalty of imprisonment, where the proper sentence would have been three or four years of penal servitude. Thus it has come to pass that, by aiming at excessive severity, the law has practically driven reluctant Judges to excessive leniency.

The rules, as nearly as they can be defined, for dealing with old offenders may be thus stated :

Careful inquiry should be made into the nature of the former charge, the length of time that has since elapsed, what the prisoner has been doing during the interval,—if he has been pursuing an honest calling, or otherwise—in short, if this second offence, as well as the first, wears the complexion rather of *accidental* or *occasional*, than of *professional* or habitual crime. If so it should prove, then one more chance should be

given to the convict, but of course with a more lengthened sentence of imprisonment and accompanied with emphatic warning that it is the last escape he will have from penal servitude. If, on the other hand, the history of the criminal, before and since the former conviction, or the nature of that or the present crime, indicates that he is a *professional* criminal, mercy in such case is wasted upon him and is injustice to the community. The truest mercy to both is to remove him for a long period from his old habits, haunts, and associates, and to relieve society from the presence of one who would certainly continue to prey upon it while he is at large, because crime is his profession, because he knows no other calling, and because he prefers it, with all its hazards, to honest industry.

OTHER OFFENCES.

A few other offences, not properly falling within either of the former categories of crime, may be briefly referred to here. They will be found, for the most part, to partake of the character of *vices*, and only to become *crimes* under certain circumstances.

The distinction between *crimes* and *vices* is not at all times sufficiently remembered, possibly not always clearly understood, either by the makers or the administrators of the criminal law. Yet it is a most important distinction, for the province of jurisprudence embraces the one and excludes the other. The object of the criminal law is the protection against invasion by others of the personal liberty and property of the subject;—the liberty to live, to think, to act, to employ the faculties of mind and body, and to use our property in any manner we please, provided we

do not thereby invade the equal liberty of others to the like free enjoyment of their persons and property. These are the objects of all criminal law and, if it trespasses beyond these objects, it becomes itself an offender against that liberty of the individual for the protection of which society exists and laws are made. The barbarous distinction between felony and misdemeanor, founded on an extinct condition of things, ought to be abolished in form as it is in fact; for it only serves to make the law complex and to create confusion in the public mind. **CRIMES** are such acts as invade the right of free enjoyment of person and property, committed with a guilty mind and by design, and not under a *bonâ fide* claim of right, or accidentally. The public avenges these wrongs because the safety of all would be imperilled if any one member of it could be invaded with impunity. In this lies the distinction between crimes and **VICES**, the latter being sins which a man commits, not against his fellow-man, but against himself, and for which he is responsible only to his God. An illustration of this distinction, as it is observed in our law, is the case of a man who eats and drinks to excess, or games for his own indulgence. So long as his vice injures only himself, the law will not control him; but if, as a consequence of it, he neglects to maintain his family, and throws them as a burden upon the public, he commits a crime against the public, for which the law will punish him. Incontinence is a *vice* in those who indulge in it; but the law does not punish it as a *crime* unless it is so openly done as to be an annoyance to others. So it is with many other immoralities. It is true that our law, in some instances, trespasses beyond its proper province in this respect; but the statutes that have so done,

like sumptuary and other laws that attempt interference with the right of the individual to do what he pleases, provided he does not thereby invade the equal liberty or property of others, are, for the most part, either obsolete or rarely sought to be enforced. There is, however, a class of laws, verging closely upon them, that make vice penal, not because it is vice, but because it becomes a crime under certain circumstances; and Judges, Magistrates, and Juries, in dealing with those composite offences, should carefully separate the *criminal* element from the merely *vicious* one, not merely for the purpose of conviction, but for the award of punishment. It is especially in this class of cases that the danger arises of an unconscious substitution of the impulse of emotion for the calm voice of reason; and Juries are apt wrongly to convict and Judges to punish, not for the crime against the public, with which alone it is their province to deal, but for the vice in the individual, with which they have generally no concern. The only way to avoid this not infrequent error is sedulously to keep in view the distinction between *vice* and *crime*, and first to see that the *criminal* portion of the offence is proved, and then to award the penalty in strict accordance with *the crime*, without permitting hatred for the *vice* and aversion to the vicious to sway the judgment in estimating the punishment.

Foremost in this class of composite offences are those more properly to be described as *immoralities*. The law usually professes to take no notice of these unless they are so practised as to offend public order and decency. Thus, a prostitute is not punishable for taking men to her own lodgings; but a person who keeps a house for the purpose of indiscriminate prostitution is subject to

penalties. It is an offence to have connection with a woman in a public thoroughfare, but not if it be done in a private place. Indecent exposure in a public place, where it may be seen by two or more persons, is an indictable offence; but it is not so to expose to one person in a private place. Many similar instances might be adduced, but these will suffice to show what it is that converts *vice* into *crime*, what is necessary to be proved for a conviction, and how the punishment should be measured.

Indictments for keeping a house of ill-fame have for their object prevention rather than punishment; and therefore, if the house has been well conducted, the usual and proper course is discharge on recognisances to appear for judgment when called upon, a pledge being taken for the giving up of the premises within a fixed time, and that the defendant will not so offend again. But if it has been a public nuisance by the habitual misconduct of its inmates, or visitors, or by the negligence of the manager, it becomes on that account a proper subject for punishment.

The sale of indecent books, photographs, and prints calls, not merely for suppression, but for punishment of some severity. It is, in fact, the distribution of a moral poison. It has been said that, inasmuch as they only purchase who are already corrupted, no harm is done to the community; but when once the evil thing has passed to a purchaser, the vendor cannot know into what innocent hands it may come and what mischief it may do. If the transaction were limited to the parties who deal in them, the argument would hold good; but as that cannot be secured, the seller is guilty of a great crime against the community and should be punished accordingly.

Sexual injuries to children, if measured by their consequences to the victim, require exemplary punishment; and it is a crime peculiarly to be held in check by fear of the consequences of detection.

This subject admits of considerable extension; but I hope enough has been said to direct the attention of Judges and Magistrates to the importance and the practicability of approaching somewhat nearer than hitherto they have done to uniformity in the measure of punishment. I will now conclude with a brief recapitulation of the course of the argument that has been here pursued, which may be useful if any reader should desire to recall the suggestions put forth more at length in the foregoing pages.

The considerations in determining the measure of punishment are :—

I. THE CHARACTER OF THE CRIME.

II. THE CHARACTER OF THE CRIMINAL.



I. *The Character of the Crime.*

For this purpose crimes may be classed thus :

1. Crimes of Wantonness.
2. Crimes from Temptation.
3. Crimes involving Breach of Trust.
4. Crimes of Fraud.
5. Crimes of Passion.
6. Crimes of Violence.
7. Crimes of Brutality and Cruelty.
8. Prevalent Crimes.

II. *The Character of the Criminal.*

For this purpose criminals may be divided into three classes—

1. The Occasional Criminal.
2. The Habitual Criminal.
3. The Professional Criminal.

Other circumstances to be taken into account in measuring punishment are :—

1. Age.
2. Sex.
3. Temptation.
4. If a first, or repeated, offence.

There are other offences, more in the nature of *vices* than *crimes*, or in which vice becomes crime.

Immoralities that become crimes in certain circumstances.

FORFEITURE FOR FELONY, AND AWARD OF COSTS, EXPENSES, AND COMPENSATION.

The new act abolishing forfeiture for felony makes provisions in respect of the property of felons which may be properly considered here, inasmuch as it empowers the Court before which the criminal is convicted to deal with such property as a part of the judgment.

The act will be found in full in another part of the volume.

The provisions to which I would invite attention in this place, are those only that relate to the powers to be exercised by the Judge at the time of the trial.

It should be premised that sect. 9 of 30 & 31 Vict. c. 35, enacted that where a prisoner is convicted, summarily or otherwise, of larceny, or other offence which includes the stealing of any property, and it appears that the prisoner had sold the property to some other person who had no knowledge that it had been stolen, the Court may, on the restitution of the stolen property to the prosecutor, order any moneys taken from the prisoner on his apprehension, not exceeding the amount of the proceeds of the sale, to be delivered to the purchaser.

The new statute makes the following further provisions as to the application of moneys taken from the prisoner.

These are contained in sections 3 and 4, which substantially empower the Court to order payment of the costs and expenses of the prosecution, and of compensation for any loss of property not exceeding 100*l.*, suffered through, or by means of, the felony.

The sections are in terms as follows :

Sect. 3. It shall be lawful for any Court by which judgment shall be pronounced or recorded, upon the conviction of any person for treason or felony, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such Court it shall seem fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the Court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay, or who may have paid the same, in such and the same manner (subject to the provisions of this act) as the payment of any costs ordered to be paid by the judgment or order of any Court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime and until the recovery of such costs and expenses from the person so

convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this act had not passed; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

Sect. 4. It shall be lawful for any such Court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony, to award any sum of money, not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid under the last preceding section of this act.

It will be observed that the powers here given are vested in any Court by which judgment may be pronounced or recorded, upon the conviction of any person for felony, and that therefore they extend to Magistrates' Courts in the exercise of their summary jurisdiction in larceny.

The condemnation to costs or expenses must be in addition to the sentence, and therefore must be pronounced at the same time or during the session of the Court.

The Court may exercise a discretion as to the amount, and it may award either costs or expenses incurred in the prosecution and conviction for the offence of which the prisoner is convicted, and either all or any part of them. The term "expenses" being used as well as costs indicates that some other than the legal costs may be thus ordered to be paid.

“Expenses” is a word of large significance, and might fairly be held to include all outlay legitimately incurred in the detection of the crime and the capture of the criminal, even although they are not such “prosecution costs” as the law recognises. This power may be often exercised with great benefit, especially in Magistrates’ Courts, where no costs are allowed for any outlay or labour preliminary to the actual appearance of the prisoner in the Court.

The 4th section empowers the Court, on the application of any person aggrieved, *and immediately after the conviction of any person for felony*, to award any sum of money not exceeding 100*l.* by way of *satisfaction or compensation* for any *loss of property* suffered by the applicant through or by means of the felony—payment to be enforced in the same manner as in the last section is stated.

It will be observed that this wholesome power is limited to a conviction for *felony*. It cannot be exercised in cases of misdemeanor, as in obtaining by false pretences, for instance; and it is limited to compensation for loss of property, and does not extend to compensation for personal injuries.

Certainly it is greatly to be regretted that the opportunity was not taken to give the like power of compensation and payment of expenses in cases of fraud, assault, and, in fact, in all offences attended with injury to the person or property of another, without reference to the ideal distinction between felony and misdemeanor. How absurd is it that compensation and costs may be awarded against the stealer of a penny loaf, but not against the ingenious rogue who has obtained 50*l.* by a false pretence.

But how is the order to be enforced?

First. The Court may order payment to be made "out of the moneys taken from such person on his apprehension." Observe, that such payment must be out of *moneys* only; an order cannot be made for the appropriation to this purpose of other property found upon the prisoner. A question here arises, what are "moneys"? Doubtless the term includes bank notes that are legal tender. But does it extend to country and foreign bank notes, which are only promises to pay money; or to promissory notes, cheques, and warrants, or orders for the payment of money? It is difficult to suppose that the legislature did not intend to confiscate all representatives of money equally with money itself; but not having done so *in terms*, it would be unsafe for the Judge to depart from the literal language of the statute.

Questions are sure to arise upon the meaning of the phrase "taken from such person on his apprehension." Is this an equivalent expression to "*found upon*" him? Must the moneys be in the bodily possession of the prisoner, or will it suffice that they shall be in his constructive possession? For instance, B. and his wife are together when B. is apprehended. Seeing the constable coming, he passes his money to his wife, and, taken from her, will that be held to be "taken from him?" Or in the like case of a servant, will the rule prevail for this purpose that the possession of the wife is that of the husband, of the servant is that of the master? Again, two or three persons have been engaged together in the commission of a joint larceny; one of them is in possession of "moneys" passed to him by the others. He is acquitted, the others are

convicted. Can the Courts construe the expression "moneys taken from such person" as extending to moneys taken from the accomplice who held them for such person at the time of his apprehension?

These are not imaginary difficulties. They are certain to present themselves frequently in these and many other forms, and they must be dealt with, not only by Judges of experience, but by Magistrates, whom they will greatly perplex; and therefore I have directed their attention to them, with a respectful recommendation that, until a construction has been put by a higher authority upon the imperfect language of the statute, they should adhere strictly to the letter of the law, and limit their orders to the application of such "moneys" only as are taken from *the person* of the prisoner at the time of his apprehension.

Secondly: Payment of costs or expenses and of satisfaction or compensation for loss of property, wholly or in part, may also be ordered by the Court, although no moneys are taken from the prisoner, or the moneys taken are insufficient for the purpose; and such an order may be enforced at the instance of the "person" liable to pay such costs or expenses, or who may have paid them in part (though not liable in law to do so), in the same manner as the judgment or order of any Court of competent jurisdiction in a civil action may be enforced.

As for money ordered by way of satisfaction or compensation, in addition to this last mode of recovery it is to be deemed a judgment debt due to the person entitled to receive the same from the person convicted.

These new statutory provisions for dealing with the

property of felons may be summarised thus, so far as they relate to acts to be done *by the Court at the time of trial and conviction*. It is not necessary to notice in this place the other provisions of the statute, for which the reader is referred to the law itself, as it will be found in its proper place in a subsequent part of this volume :

1. The jurisdiction is given to every Court competent to pronounce or record judgment on the conviction of any person for treason or felony.

Consequently, the powers of the act extend to Magistrates in Special Sessions as well as in General or Quarter Sessions.

2. It must be “in addition to the sentence, and immediately after conviction.”

3. The Court is empowered to order—

(1.) The payment of “the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence” of which the prisoner is convicted. *And also*

(2.) “Satisfaction or compensation for any loss of property suffered by the applicant, through or by means of the said felony,” not exceeding in amount 100*l*.

4. To be made out of—

(1.) Any moneys taken from such person on his apprehension.

(2.) To be enforced as is “the payment of any costs ordered to be paid by the judgment or order of any Court of competent jurisdiction in any civil action or proceeding.”

And in case of an order for “satisfaction or compen-

sation for any loss of property suffered through or by means of the said felony.”

(3.) The order is also to be deemed a judgment debt due to the person entitled to receive the same from the person so convicted.

For the appointment by justices of administrators and curators of the property of convicted felons, and the powers and duties of such officers, the reader is referred to the statute.

THE HABITUAL CRIMINALS ACT.

THE reader's attention may be usefully directed to some difficulties that have arisen in the construction of the Habitual Criminals Act (32 & 33 Vict. c. 99).

In reading the 8th section it is to be observed that the marginal note is entirely wrong. It runs thus—“Person twice guilty of felony and *not punished with penal servitude*, to be subject to the supervision of the police.” The section contains no such provision as that in *italics*. On the contrary, it enacts that supervision of the police is to be the consequence of a former conviction, in addition to any other punishment which may be awarded.

I extract so much of sect. 8 as calls for comment :

8. Where any person is convicted on indictment of any offence specified in the first schedule hereto in England or Ireland, and in the second schedule hereto in Scotland, and he be proved to have been previously convicted of any offence specified in the said schedule, either before or after the passing of this act, then, in addition to any other punishment which may be awarded to him, it shall be deemed to be part of the sentence

passed on him, unless otherwise declared by the court, that he is to be subject to the supervision of the police as hereinafter mentioned for a period of seven years, or such less period as the court shall direct, commencing from the time at which he is convicted, and exclusive of the time during which he is undergoing his punishment.

* * * * *

When a person is convicted under this section of an offence which subjects him to the supervision of the police, the record of his conviction shall contain a statement to the effect that he is subject to the supervision of the police in pursuance of this Act for a period of seven years commencing from the date of his conviction, and exclusive of the time during which he is undergoing his punishment, or words to the like purport, but the omission of any such statement shall not exempt any person from the operation of this section.

The previous conviction must be for one of the following offences :

Any felony not punishable with death.

Uttering false or counterfeit coin.

Possessing counterfeit gold or silver coin.

Obtaining goods or money by false pretences.

Conspiracy to defraud.

Misdemeanor under s. 58 of 24 & 25 Vict. c. 96,
namely :

Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of

the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

The first question that arises on this section is as to the manner in which a previous conviction is to be proved so as to bring the convict within its provisions.

Some Judges consider it to be necessary that the previous conviction should be charged in the indictment, proved, and found by the jury in precisely the same manner as hitherto. Others, and among them the writer of this note, are of opinion that the former conviction needs not to be so charged, but may be proved by any sufficient legal evidence to the satisfaction of the Judge alone. In this conviction I am confirmed by the above list of offences that may be proved for the purpose of placing the convict under police supervision, for some of these could not be charged in an indictment for felony, and, consequently, would be incapable of proof unless proved in the manner suggested. If this view be the right one, all that is required where a former conviction has been discovered, although not charged in the indictment, is that the Judge should take special care to see that such former conviction is sufficiently proved; he should require the production of the certificate and the proof of identity precisely as if it had been charged in the indictment; and an opportunity should be given to the prisoner to deny or disprove it. It is to be noted that where this course is taken there must be an express recorded judgment of the Court that the prisoner had been formerly convicted of the offence (stating it); otherwise police supervision would not follow as of course. It would be the better

plan in such a case for the Judge to pronounce publicly the sentence of police supervision.

The section proceeds to enact that police supervision "shall be deemed to be part of the sentence." It is not, therefore, necessary that it should be stated in passing sentence; nor, indeed, is it the general practice of the judges to do so. But it is well worthy of consideration whether, as matter of policy, the sentence of police supervision should not be pronounced in open court in *all* cases; not merely that the convict, but that his friends and companions and all the public, should know that the consequences of crime are not limited to the immediate punishment, but that they will be followed by inconveniences and restraints, more or less disagreeable, for many years after the punishment has been endured. The writer was once asked by a convict on whom he had pronounced this sentence what it meant, and certainly he was unable to say; but the very vagueness of it is calculated to make it formidable to the minds of the convict class; and as it was designed to be repressive, surely it ought to be proclaimed as publicly as possible that a second conviction does entail such consequences. It will be observed that the direction in the latter part of the section is not in accordance with the provision in the preceding part of it, which empowers the Court to order a less term of supervision than seven years; for it proceeds to enact that the record of conviction shall contain "a statement to the effect that he is subject to the supervision of the police, in pursuance of this act, *for a period of seven years*, commencing from the date of his conviction and exclusive of the time during which he is undergoing his punishment, or words to the like purport;" omitting the words "or for such

lesser term as the Court shall have ordered." This is one instance of the many to be found of the careless manner in which the bill was drawn or amended. It is, however, of little practical importance; for the section goes on to provide that "the omission of any such statement shall not exempt any person from the operation of this section."

Passing to sect. 11, relating to receivers of stolen goods, it is enacted that—

Where any person who either before or after the passing of this act has been previously convicted of any offence specified in the first schedule hereto, and involving fraud or dishonesty, is found in the possession of stolen goods, evidence of such previous conviction shall be admissible as evidence of his knowledge that such goods have been stolen; and in any proceedings that may be taken against him as receiver of stolen goods, or otherwise in relation to his having been found in possession of such goods, proof may be given of his previous conviction before evidence is given of his having been found in possession of such stolen goods; provided that not less than seven days' notice shall be given to such person that proof is intended to be given of his previous conviction, and that he will be deemed to have known such goods to have been stolen until he has proved the contrary.

The words "he will be deemed to have known such goods to have been stolen until he has proved the contrary," have been read by the majority of lawyers as meaning what the words in their usual sense would certainly be taken to mean, namely, that a person charged with receiving stolen goods, having been previously convicted of the like offence, on proof of possession of the stolen goods, will be "deemed to have known such goods to have been stolen until he has proved the contrary," and that the effect of such an enactment is to throw upon the prisoner the burden of proof; that is to say that, whereas in other cases the

proof of guilty knowledge was on the prosecution, where the prisoner has been formerly convicted, guilty knowledge is to be presumed unless he proves the contrary. But the Court of Criminal Appeal has taken a different view of this provision, and, rendering the words in a non-natural sense, has decided in the case of *Reg. v. Davis* (22 L. T. Rep. 763) that the act has made no change in the burden of proof, and that it is still, as it was before, for the prosecution to prove that the prisoner had guilty knowledge. According to this decision, the only change made by the section is that proof of a previous conviction for "any offence specified in the first schedule, and involving fraud or dishonesty, may be given in evidence against him before evidence is produced of the possession of such stolen goods;" but seven days' notice is to be given to the prisoner that such proof of a previous conviction is intended to be produced.

Some time since I had occasion to ask the opinion of my learned friend, Mr. GREAVES, Q.C., the framer and draftsman of the Criminal Law Consolidation Acts, and the well-known editor of "*Russell on Crimes*," for his views on some points of Criminal Law, upon which considerable difference and doubt appeared to prevail. I was favoured, in answer to my request, with an elaborate treatise on those subjects, which was of so much value that, with his permission, I gave the Profession the benefit of it in the pages of the *Law Times*. Appearing to me to be well worthy of pre-

servation in a more accessible form, I have asked and obtained the consent of the Author to its republication in this volume, where it will, I doubt not, be an appropriate and acceptable addition to the Consolidation Acts that are his handiwork, and I am sure will not be looked upon by readers as the least valuable portion of these pages. I preface it with an article, by the same hand, on "The Law of Arrest without a Warrant," written in answer to a paper on that subject which appeared in the *Times*.

THE LAW OF ARREST WITHOUT A WARRANT.

Bennett & Hart Feb. 18.
It is so very desirable that the authority to arrest without a warrant in cases of indictable offences should be clearly understood, that I have drawn up the following paper, and I have thought it incumbent on me so to do in order that my silence may not be supposed to give an implied assent to everything contained in a paper on the subject which appeared in the *Times*, and was transferred into these columns, as I have been erroneously supposed by some to be the author of that paper.

I will first deal with cases of misdemeanor, and I shall use that word throughout to denote an offence below treason and felony, for which an indictment will lie; and it must be borne in mind that it is a general rule that "an attempt to commit a misdemeanor is a misdemeanor, whether the offence is created by statute, or was an offence at common law;" (*Rex v. Roderick*, 7 C. & P. 795, Parke, B.; *Reg. v. Chapman*, Den. C. C. 432.)

Now it is perfectly settled that no person can, without a warrant, arrest another for a misdemeanor after it is altogether over; in other words, the authority to arrest, if it exist, is confined to cases where "the party is caught in the fact;" (*Fox v. Gaunt*, 3 B. & Ad. 798.) And this limitation necessarily excludes all misdemeanors where the offence consists entirely in the omission or neglect to do or perform some act or duty; such, for instance, as the neglect to provide food for a child or apprentice; the neglect to repair a highway by a party bound to

repair *ratione tenuræ*, and the like: (see *Horley v. Rogers*, 2 E. & E. 674.)

In the paper in the *Times* it is laid down that "in a case of mere misdemeanor, indeed, except when a statute enacts otherwise, a private individual is not justified in arresting without a warrant; and even an officer is not justified in so arresting, unless the misdemeanor is committed in his presence."

This general proposition as to private individuals is partly correct and partly erroneous. It is correct as to the cases of omissions and neglects, which have already been mentioned, and as to all cases where the party is not caught in the act; but it is erroneous in numerous other cases; and the important question is whether it is not erroneous in every case where the party is caught in the act; and whether in every such case a private person may not lawfully arrest the offender without a warrant.

In *Hollyday v. Oxenbridge* (Cro. Car. 324), to an action of trespass, &c., the defendant pleaded that the plaintiff *communiter usus fuit* an ill trade called cheating at play with false dice and defrauding people of their money; that he went to a house where he found the defendant and one Arnold, unexpert in such play, and induced them to play at dice with him for money, and the plaintiff playing with them "with false dice subtilly conveyed by the plaintiff (divers sums of the defendant's money *falso et fraudulenter depredati*)" would have sought to escape, but the defendant, knowing certainly that he was deceived by the cheating with false dice, *molliter manus imposuit* on the plaintiff to take him before a justice to be examined concerning the said offence, and that the justice examined him and bound him to appear at the sessions, where he was convicted of the said offence. On demurrer to this plea, it was objected that "one cannot, without an officer, for any cause, and that upon his own suspicion only, arrest or stay any person unless in felony." But all the Court (the Chief Justice being absent) held "the plea to be good; for it is shown that he was a common cheater, and that he cozened with false dice, and therefore the defendant led him to a justice of the peace; and it appears by the plea that there was good cause for staying him; for he was afterwards convicted of that offence. And it is *pro bono publico* to stay such offenders." There is a note of

this case in 2 Roll. Abr. tit. "Trespass" C., pl. 2, p. 546, which agrees with this report.

Now, here we have the very proposition which is asserted in the paper in the *Times*, put forward as the only ground of objection to the plea, and instantly overruled; and the case decides that the right to arrest a person caught in the commission of an offence is not confined to treason and felony, but does at least extend to this misdemeanor. Then the decision is not rested upon any ground which is solely applicable to that offence; but is rested upon the broad ground that "it is *pro bono publico* to stay such offenders," which is equally applicable to every case of misdemeanor, and is, no doubt, the ground upon which the authority to arrest in treason and felony also rests.

I have stated this case thus fully, because it may well be considered as the leading case upon the subject. It has never been questioned, and, on the contrary, it has been sanctioned by very great authority. In *Fox v. Gaunt*, the following passage of Hawkins, in which he cites and comments on this case, was cited in the argument: "It hath been adjudged that anyone may apprehend a common notorious cheat, going about the country with false dice, and being actually caught playing with them, in order to have him before a justice of the peace; for the public good requires the utmost discouragement of all such persons; and the restraining of private persons from arresting them without a warrant from a magistrate would often give an opportunity of escaping. And from the reason of this case it seems to follow that the arrest of any other offenders by private persons, for offences in like manner scandalous and prejudicial to the public, may be justified:" (2 Hawk. P. C., c. 12, sect. 20.) And Lord Tenterden, C.J., in delivering the judgment of the Court, said, "The instances in Hawkins are where a party is caught in the fact, and the observation there added assumes that the person arrested is guilty. Here the case is only of suspicion." Little-dale, Parke, and Taunton, JJ., concurred. Here, then, is a distinct recognition by these four great judges of the case of *Hollyday v. Oxenbridge*, and of the distinction between the apprehension of a party caught in the act of committing a misdemeanor and on a charge of having committed such an offence at a previous time; and as the Court expressly held that there was no distinction in the latter case between one kind

of misdemeanor and another, the fair inference is, that there is no distinction in the former case either—in other words, the fair inference from this decision is, that where a party is caught in the act of committing any misdemeanor, he may be arrested by any private person. It seems clear, also, that it was tacitly assumed by all in this case that there was power to apprehend a party caught in the act; for if there were no such power, there assuredly could be no power to arrest after the offence had been completed, and the offender had gone away.

It does not appear by Croke's report of *Hollyday v. Oxenbridge* that any previous authorities were cited; but I have no doubt that the Judges, who in those days were very familiar with the Year Books and other old authorities, were aware of the previous authorities, especially as they based their decision upon the very ground there stated. Thus, in the Year Book (4 Hen. 7, fol. 18, pl. 12), Hussey and Fairfax held that any one could apprehend night-walkers, "*for it is for the common benefit*" [the reference here to Pasc. 2 Hen. 7, fol. 6, should be fol. 16], and in the case in the Year Book (4 Hen. 7, fol. 1, 2, pl. 2), where it was held that a watchman may arrest a night-walker by a warrant in law (as Lord Coke says, in 2 Inst. 52), it was laid down by Fairfax that a court leet might lawfully inquire of night-walkers, *for it is for the common weal*. So that we see where the principle on which *Hollyday v. Oxenbridge* was decided may have come from, clearly enough.

In *Willow's case* (Latch. 173), it was held that an indictment which alleged that the defendant, being of ill-fame, &c., *fuit nocte vagans*, was good, and Doderidge, J. (a great Judge), said that by the common law any man can arrest a night-walker, and he referred to the Year Book (4 Hen. 7, fol. 18, pl. 12).

Lord Coke (2 Inst. 52) says: "If a man keep the company of a notorious thief, whereby he is suspected, &c., it is a good cause and warrant in law to arrest him." For which he cites the Year Book, 26 Edw. 3, 71a [an error for 17a, pl. 8], where the case was that the bailiffs of H. were about to arrest the suspected person, but he fled, and they freshly pursued him to W., where "a lour pursuit" the bailiffs and constable there arrested him. Neither argument nor judgment is given. It is clear the bailiffs of H. would be private individuals in W.

I have referred to these old authorities, and I might have

referred to others in cases of affrays and breaches of the peace, in order to show that there has been from very early times indeed a regular current of decisions and judicial opinions that any private person may arrest an offender caught in the act of committing a misdemeanor, and, consequently, that *Hollyday v. Oxenbridge* was only an instance of a previously well-known rule.

I will next advert to a class of cases of which there are many to be found in the old books, but it will be quite sufficient to refer to the late authorities alone.

In *Timothy v. Simpson* (5 Tyr. R. 244), the defendant, who had himself immediately before witnessed an affray, gave one of affrayers in charge to a constable on the very spot where it was committed, and whilst there was a reasonable apprehension of its continuance, and the Court held that he was justified in so doing, though the constable had seen no part of the affray. And, after referring to old authorities, the Court say, in one of the ablest judgments delivered by Lord Wensleydale: "It is clear, therefore, that *any person* present may arrest the affrayer at the moment of the affray, and detain him till his passion has cooled and his desire to break the peace has ceased, and then deliver him to a police officer? And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it? *Both cases fall within the same principle*, which is, that for the sake of the preservation of the peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it so long as his conduct shows that the public peace is likely to be endangered by his acts." And the Court afterwards say: "He was justified in securing any one (of the affrayers), not absolutely, but only until a Magistrate could inquire into all the circumstances, on oath, and bind one party to prosecute or the other to keep the peace, as upon a review of all the circumstances he might think fit."

And this decision has been approved in *Ingle v. Bell*, (1 M. & W. 516), *Cohen v. Huskisson* (2 M. & W. 477), *Webster v. Watts* (11 Q. B. 311), and other cases; so that there can be no doubt that any private person may take in to custody any other, who commits a breach of the peace in his presence, and

take him before a magistrate, to be dealt with according to law; and this rule will apply to all cases of riot, rout, unlawful assemblies, and affrays.

I now turn to another class of misdemeanors, viz., attempts to commit felony. Many of these are now made felony by statute; but at common law they were all of them only misdemeanors; and I shall here deal with them as such only. "All persons whatsoever, who are present when a felony is committed, are bound to apprehend the offender" (2 Hawk. P. C. c. 12, s. 1); and "silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprision" of felony: (1 Hawk. P. C. c. 59, s. 2.)

It would seem that these authorities alone prove that a private person may apprehend anyone attempting to commit a felony. The object of apprehending an offender is twofold; first, in order to prevent the commission of an offence; and secondly, in order to bring the offender to justice, and both are *pro bono publico*. If there were no power to arrest in order to prevent a felony, either unknown offenders would always escape, or the offender must be permitted to complete his crime and then be arrested. Now, the primary object of the law is the prevention of crime, and over and over again have I heard learned Judges, especially that great and good Judge, Patteson, J., severely reprimand private persons for not at once arresting offenders whilst attempting to committing crimes, instead of watching them till they had completed their object. In order to prevent a breach of the peace, an offender may be apprehended by a private person, and strange indeed would it be if the same might not be done in order to prevent a capital offence; and, in considering this question, it must be remembered that all felonies were capital at common law. There is, however, abundance of decisive authority upon the subject.

In the Year Book, 9 Edw. 4, fol. 26, pl. 36, to trespass for false imprisonment, the defendant pleaded that the plaintiff was lying in wait in the highway to rob the King's subjects, and one Alice at Stile rode along the highway, against whom the plaintiff drew his sword, and commanded her to deliver her purse to him, whereon she levied hue and cry, and the defendant was riding there, and heard the cry, and returned to her, and took the plaintiff; and because there were no stocks in the village took

him to S., and there delivered him to the constable. Genney objected to the plea, that no (private) person can imprison another for any trespass; but a constable can arrest him until he has found surety. But for suspicion of felony anyone can arrest another; but then it is necessary that a felony has been committed in fact, and that he who is arrested was suspected of it, but here no felony was committed. Moile: "If a man say to me, 'See this man, I will certainly kill him,' &c., in this case I may hold him so that he do not kill the man, and yet this holding is an imprisonment, but it is for a lawful cause." Genney: "In your case, if I see that a man would have killed another, I may well prevent him, and so I may prevent a man from doing a thing against the peace; but yet I cannot arrest him and commit him to gaol." Nedham: "*You may well arrest and commit him to gaol, if he intends to do a felonious act, as this was.*" And all the justices held this justification good. In the Year Book, 13 Edw. 4, fol. 9, pl. 4, it was held that for felony a man may break into a house to arrest the felon, for *to arrest him is for the common weal.*

In *Handcock v. Baker*, 2 B. & P. 260, to trespass for breaking and entering the plaintiff's dwelling-house, forcing him out of his house along the public street and imprisoning him, the defendant pleaded that the plaintiff in his dwelling-house assaulted his wife, and purposed to have feloniously killed her, and was on the point of doing so, whereupon the defendant, to prevent the plaintiff from so killing his wife, and committing the said felony, broke into the house and prevented the plaintiff from killing his wife; and for the same purpose, and also for that of taking and delivering the plaintiff to a constable, to be by him taken before a justice, and dealt with according to law, kept him a reasonable time, &c., and then took him along the public streets till he could find a constable, and then delivered him to the constable for the purpose aforesaid; and this plea was held good after the verdict by Lord Eldon and the Judges of the Common Pleas; and Chambre, J., said—"There is a great difference between the right of a private person in cases of intended felony and of a breach of the peace. *It is lawful for a private person to do anything to prevent the perpetration of a felony.*" One objection to this plea was that it did not allege that the plaintiff's intention to kill continued during the whole time the

defendant detained him; but the Court held that "it was sufficient to answer that after verdict it must be presumed that everything is proved which is necessary to support the verdict." It should seem that a better answer would have been that this plea justified the imprisonment on two grounds; firstly, in order to prevent the commission of the felony; and, secondly, in order that the plaintiff might be taken before a justice and "dealt with according to law;" and as to this the continuance of the intention was certainly unnecessary.

It may be doubted whether this plea alleges an attempt to murder, as it uses the terms of an indictment for manslaughter, and omits the technical terms of an indictment for murder.

In *Rex v. Hunt* (R. & M. C. C. R. 93, A.D. 1825), the prisoner was indicted for wounding; and it appeared that he had in the night entered the prosecutor's yard, with intent to break open the stable, and steal his goods. The prosecutor was called up by one of his servants, and found the stable had been attempted, and the door cut in such a manner that the bolt was exposed, and found the prisoner concealed in the yard, and some house-breaking instruments, with one of which the door of the stable appeared to have been cut, were found near the spot where the prisoner was. The prosecutor arrested the prisoner, who afterwards cut the servant, who was assisting in detaining him. It was objected that the prisoner was not lawfully in custody, an attempt to commit felony being only a misdemeanor; but it was held that, "the prisoner being detected in the night attempting to commit a felony, might lawfully be detained without warrant till he could be taken before a magistrate." At the time when this offence was committed a burglary might be committed in a stable, which was within the curtilage, and consequently at that time an attempt to break into such a stable in the night, with intent to steal the goods therein, was an attempt to commit a felony, and that was clearly the offence of the prisoner; for at that time no other attempt to break into a stable was an attempt to commit a felony; as the 10 & 11 Will. 3, c. 23, and 1 Geo. 4, c. 117, which applied to private stealing in a stable, did not apply where the stable was broken open at the time the goods were stolen: (Fost. 79; 2 East P. C. c. 16, s. 79, p. 641.) This case, therefore, decides that a private person may arrest anyone caught in the act of attempting to commit a burglary. I have

made this explanation, because the case is so reported that any one might suppose that the power to arrest depended on the attempt to commit a felony being made in the night; whereas the night is really only mentioned in the case because the particular felony there attempted could only be committed in the night.

In *Rex v. Howarth* (R. & M. C. C. R., 207) a similar question arose, and, in stating the case for the Judges, Littledale, J., raised the question whether a private person could arrest a person found attempting to steal boards; but in the argument for the prisoner, that great lawyer, Sir W. Erle, put it thus: "The power to arrest for offences inferior to felony is confined to the time of committing the offence. Neither peace officer nor private individual can arrest for a misdemeanor after it is over upon the charge of another, and the attempt to commit a felony is within the rule;" and then he went on to contend that "here the attempt was over, the intention abandoned," &c. And in reply to *Rex v. Hunt*, which was cited for the Crown, he said there "the prisoner was caught in the act, and was arrested actually attempting to commit a felony. Here both these facts are negatived." He seems, therefore, to have admitted that any person might arrest another for an attempt to commit a felony in his presence; and the Judges clearly so understood him; for they held that, as the prisoner was taken on fresh pursuit, it was the same as if he had been taken in the outhouse where the boards were, which clearly assumed that he might lawfully have been arrested there.

The arrest in this case was also supported by the counsel for the Crown under "The Vagrant Act" (5 Geo. 4, c. 83, s. 4), which makes every person found, *inter alia*, in any outhouse "for any unlawful purpose" a rogue and vagabond, and sect. 6, which authorises any person to apprehend any person "found offending" against the act; but this statute was neither noticed in the reply nor by the Judges, and it seems clear that it did not apply to this case; for the offences created by sect. 4 are plainly offences for which there was no provision previously made; such as a man going into any of the places specified for "any unlawful purpose," but not having attempted to carry it into effect. To extend it to attempts to commit felony would raise the question whether, if it did so extend, it did not

impliedly repeal the heavier punishments to which they were liable.

On these authorities it seems to be perfectly clear that any private person may lawfully apprehend any person whom he may catch in the attempt to commit any felony, and take him before a justice to be dealt with according to law.

I have now adduced abundantly sufficient authorities to prove that the general assertion in the paper in the *Times* that "a private individual is not justified in arresting without a warrant" a person found committing a misdemeanor, cannot be supported. On the contrary, those authorities very strongly tend to show that any private individual may arrest any person whom he catches committing any misdemeanor. It is quite true that I have been unable to find any express authority which goes to that extent; but it must be remembered that where the question turns on some common law rule, there never can have been any authority to lay down any general rule; each case must necessarily be a single instance of a particular class. And as in larceny, notwithstanding the vast number of cases which have been decided, no complete definition of the offence has ever yet been given by any binding authority, so in the present case we must not be surprised if we find no general rule established.

But when we find that all misdemeanors are of the same class; that it is impossible to distinguish in any satisfactory way between one and another, and that in the only case (*Fox v. Gaunt*) where such a distinction was attempted, the court at once repudiated it; and when, on the question whether a party indicted for a misdemeanor was entitled to be discharged on *habeas corpus*, Lord Tenterden, C.J., said, in delivering the judgment of the court, "I do not know how, for this purpose, to distinguish between one class of crimes and another. It has been urged that the same principle will warrant an arrest in the case of a common assault. That certainly will follow:" (*Ex parte Scott*, 9 B. & C. 446.) And when, above all, the same broad principle that it is for the common good that all offenders should be arrested, applies to every misdemeanor, and that principle has been the foundation of the decisions from the earliest times, and was the ground on which *Timothy v. Simpson* was decided; the only reasonable conclusion seems to be that the power to arrest

applies to all misdemeanors alike wherever the offender is caught in the act.

As I understand the words, "except where a statute enacts otherwise," in the passage I have copied from the *Times*, those words refer to statutes which authorise the apprehension of offenders for offences created by them, such as the Larceny and Malicious Injuries Acts. If that be so, the learned author seems to have overlooked the very important clause in sect. 11 of the 14 & 15 Vict. c. 19, which merits a prominent notice in any paper on the power to arrest in cases of misdemeanor. This clause enacts that "it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night." It is perfectly clear that this provision includes every misdemeanor committed in the night. As I was the author of this clause I can explain the reason why it was introduced. A serious misapprehension had arisen in cases of poaching by three or more persons armed in the night, under sect. 9 of the 9 Geo. 4, c. 69. Sect. 1 of that act created an offence, not indictable, but punishable on summary conviction, where any person entered or was in any land by night for the purpose of poaching; then sect. 2 empowered the owner of the land, and certain others, to apprehend any person found committing any offence against sect. 1. And sect. 9 made any persons who, to the number of three or more, entered or were in any land by night, armed with offensive weapons for the purpose of poaching, guilty of a misdemeanor.

In *Rex v. Ball* (R. & M. C. C. R. 330), the prisoner was indicted for shooting at S. Goode with intent to resist his apprehension for the offence that he and divers other persons were found armed in the night in a wood for the purpose of taking game. It is doubtful whether this sufficiently charged an offence within sect. 9 of the 9 Geo. 4, c. 69; but the evidence proved an offence by the prisoner and twenty-one others within sect. 9; and thereupon it was objected that sect. 2 gave no power to arrest for any offence other than one within sect. 1, and that this was an offence against sect. 9, and not against sect. 1; but Bayley, B., "thought the offence was *an offence upon the first section*, though, from the circumstances of aggravation that accompanied it, it was *punishable* under the ninth section," and the Judges supported this ruling, "as the prisoner was guilty of

an offence under the first section as well as the ninth." As the conviction was sustained on this ground, it was unnecessary to consider the power to apprehend for a misdemeanor under sect. 9, even if it could have been raised under this form of indictment; and the point was not noticed in the case. In *Rex v. Warner* (R. & M. C. C. R. 380; 5 C. & P. 525), the prisoners were convicted of maliciously wounding a gamekeeper of one manor, who met them on a highway two or three hundred yards from a wood in another manor, and the conviction was supported on the ground that there was no attempt to arrest the prisoners, and no provocation sufficient to reduce the offence to manslaughter, if death had ensued. It was admitted by the counsel for the Crown that there was no power to apprehend, under sect. 2 of the 7 Geo. 4, c. 69, and there clearly was not, for the prisoners were not "found upon any land committing" any offence against sect. 1, but were met at a distance from the place where the offence, if any, had been committed; and, for the same reason, there clearly was no power to apprehend for the misdemeanor under sect. 9, and this point was not noticed in this case. In *Rex v. Addis* (6 C. & P. 389) a party of poachers were in a wood in pursuit of game, and the deceased, an assistant keeper of Mr. Clive, pursued and tried to apprehend them, and one of them turned round and shot the deceased. Mr. Clive had only the owner's permission to preserve the wood, which was not within any manor belonging to Mr. Clive. It was objected that the deceased had no authority to apprehend under sect. 2 of the 9 Geo. 4, c. 69, and Patteson, J., held the objection to be well founded, but he afterwards told me that he thought he had gone too far in this case. In *Rex v. Davis* (7 C. & P. 785), the prisoner was indicted for shooting at a servant of Sir T. Winnington, with intent to murder him. The prisoner and another man had been found poaching by night in a wood of Colonel Charlet's, and the servant of Sir T. Winnington was shot at whilst pursuing one of them. Parke, B., said: "Unless the prosecutor had authority from Colonel Charlet to arrest poachers, it would only have been manslaughter if death had ensued. If Sir T. Winnington was lord of a manor, including his own land and Colonel Charlet's, he might be justified in apprehending." And thereupon a witness proved that the wood was in a manor of

Sir T. Winnington's. As there were only two poachers in this case, they were only guilty of an offence under sect. 1, and sect 9 did not apply.

From this examination of the cases, it is clear that the point as to the power to apprehend for a misdemeanor against sect. 9 was never raised, and that the only case in which it would have been material was *Rex v. Addis*. It had appeared, however, to me that if that question were raised the cases I have referred to might be cited to show that there was no authority to arrest offenders against sect. 9, except that given by sect. 2; and as any doubt as to the authority to arrest in these cases was calculated to lead to acts of violence, it seemed to me, when I prepared the 14 & 15 Vict. c. 19, to be much better to set the matter at rest, and therefore I framed sect. 11 of that act, and, instead of reciting that there was no power to arrest in cases of misdemeanor, I recited, as is usual in like cases, that "doubts had been entertained as to the authority to apprehend persons found committing offences in the night."

In *Reg. v. Sanderson* (1 F. & F. 598) Willes, J., held that sect. 11 of the 14 & 15 Vict. c. 19, authorised the apprehension of persons found committing offences against sect. 9 of the 9 Geo. 4, c. 69; and that very learned Judge held that the clause applied to all persons whomsoever "found committing offences in the night," and thus fully carried into effect the object with which the clause was framed.

In this case the counsel for the prisoners alleged that "the night was (by sect. 13 of the same act) enacted to be the same as in cases of burglary." Now, sect. 13 enacts that "the time at which the night shall commence in any offence against the provisions of this act shall be the same as in cases of burglary;" and sect. 11 not only does not create any offence, but it does not even apply to any offence against the act, for the previous section provides for the apprehension of persons found committing any offence against the act. Night, therefore, in sect. 11 is not defined at all; and the time at which it begins and ends in each case, with reference to this section, will depend on the common law or statute applicable to the case.

There is a distinction between a private person and a constable as to the power to arrest anyone upon suspicion of having committed a felony, which is thus stated by Lord Tenterden, C. J.,

in *Beckwith v. Philby* (6 B. & C. 635): "In order to justify a private person in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has been actually committed; whereas a constable, having reasonable ground to suspect that a felony has been committed, is authorised to detain the party suspected until inquiry can be made by the proper authorities." This distinction is perfectly settled. The rule as to private persons was so stated by Genney in the Year Book, 9 Edw. 4, already mentioned, and has been fully settled ever since the case of *Ledwith v. Catchpole* (Cald. 291, A.D. 1783).

But there seems to be an exception to this rule where an indictment for felony has been found against the party apprehended, for this seems to be a good cause of arrest by a private person: (Dalt. c. 170, s. 5; 1 East P. C., c. 5, s. 68, p. 301.) And as the Court of Queen's Bench will not discharge a party indicted even for a misdemeanor (*Ex parte Scott*, already cited), this seems to show that a detention of a person indicted is lawful: (see, also, the *Canadian Prisoners' case*, 5 M. & W. 32.)

It is quite clear that a person who has committed a felony may, by the common law, be apprehended in any part of Her Majesty's dominions. By the common law each county in England was as distinct from every other county as if it were a different kingdom; and Lord Mansfield, C. J., in *Rex v. Weston-under-Penyard* (4 Burr. 2507), said, "The old jurisdiction of counties was local; they were like different kingdoms. There was no jurisdiction out of the county; no process out of it." And so totally distinct is one county from another, that where a parish lies partly in two adjoining counties, an indictment for the non-repair of part of a highway lying in one county must be against the inhabitants of the part of the parish which lies in that county: (*Ibid.*) The question, therefore, of the right to arrest a felon in one part of Her Majesty's dominions for a felony committed in another, is precisely the same as that of the right to apprehend a felon in one county for a felony committed in another.

Now, it was held very long ago that any person may apprehend a felon in one county for a felony committed in another county (Year Books, 11 Edw. 4, fol. 4, pl. 8; s. c. fol. 6, and 13 Edw. 4, fol. 8, pl. 4; see also *Platt v. Lokke*, Plowd. 35, 37;

2 Hale P. C. 51); and a justice of the peace may examine a felon arrested in his county for a felony committed in another county (2 Hale, P. C. 51), or may issue his warrant to apprehend a felon who is in his county for a felony committed in another county: (1 Hale, P. C. 580.) In reality, the corporeal presence of a felon in a county gives exactly the same power to apprehend him there as if the felony had been there committed. And hence it is that it is quite immaterial in what part of Her Majesty's dominions the felony was committed or the prisoner apprehended. Thus, a prisoner may be apprehended in Scotland for a felony committed in Ireland, brought to England, and sent to Ireland to be tried: (*Col. Lundy's case*, 2 Ventr. 314.) So a person may be apprehended in England for a felony committed in Ireland, and sent thither to be tried: (*Rex v. Kimberley*, 2 Str. 848.) So a person arrested in England for a murder in Barbadoes may be sent thither to be tried: (*Anonymous*, cited 2 Ventr. 314.) Nay more, if a felony be committed out of the Queen's dominions, whether on land or sea, the felon may be apprehended in England, as in the case of the man committed in England for a murder in Portugal, cited in 2 Str. 849, from 3 Keble, 785, and of the man who had committed a felony on the high seas, and was examined and committed by a justice into whose county he came: (*Rex v. Muilman*, Park, 241; 5 Burn, J., D. and W. 11.)

And here I may mention a case where a man was arrested in London on his own confession that he had committed a felony in Australia not very long since, and, if I mistake not, discharged on the ground that such an offender could only be dealt with under the 6 & 7 Vict. c. 34, which requires a warrant to be issued in that part of the Queen's dominions where the offence was committed for his apprehension in Great Britain. But this was a clear mistake, as that act was expressly passed "to make more effectual provision for the apprehension and trial of offenders" who may be in other parts of Her Majesty's dominions than those where the offences were committed. So that it is perfectly clear that the common law power of arrest in such cases remains unaffected by this act.

Very important questions may arise where an officer has two or more warrants, one of which is bad, or a bad warrant, and a lawful authority to arrest independently of that warrant. The points which may arise in such cases in consequence of the

resistance of the party apprehended, or of the interference of other persons, are very numerous, and only a few of them can be noticed.

In civil cases it is fully settled that an officer is not confined in court to the authority which alone he alleged when he acted; but he may certainly resort to any authority which justified his proceedings. *Governors of Bristol Poor v. Wait* (1 Ad. & E. 264), which is in accordance with the Year Book 5 Hen. 7, fol. 23, not 13 as cited in 2 Roll. Abr. Replevin, M. pl. 4, p. 433, and other authorities there collected, and many subsequent cases. But I have failed to discover any criminal case in which any such point has arisen, except on *habeas corpus*.

Some civil cases, however, nearly approach criminal cases. In *Grenville v. The College of Physicians* (12 Mod. R. 386), where in an action for assault, &c., the defendants justified under a warrant, and it was held that a replication *de injuria* was bad because it did not traverse the warrant, Holt, C.J., said: "Suppose one has a legal and an illegal warrant (to arrest), yet he may justify by virtue of the legal one, for it is not what he declares, but the authority which he has is his justification." In *Hoye v. Bush* (1 M. & G. 775), the plaintiff had been arrested under a warrant to take John Hoye for stealing a mare; but his name was really Richard, and it was held that the arrest was illegal, although he was the person against whom the information was given, and the warrant was intended to be issued. It was not proved that any felony had been committed, and Tindal, C. J., observed during the argument, "If he were the guilty person, the officer would not want the warrant, supposing the felony to have been committed." And in delivering judgment the same great Judge said: "Where, indeed, it can be shewn that a felony has actually been committed, the constable may throw the warrant aside. It will be sufficient in such a case for the constable to show that he has taken the person really charged with the offence, however he may have been described in the warrant." In both these cases these dicta were perfectly correct, as they were civil suits, and in such a suit the authorities abundantly show that the officer may justify his acts by any authority which he in fact possessed. But it seems to admit of grave doubts whether this doctrine can be supported in all criminal cases. Suppose a constable, having

a good and bad warrant, arrest a man on the bad warrant only, which he allows the man to read, who sees it is void, and resists his arrest on that ground, and the result is the death of the officer; if this had been the only authority the officer had the offence would have been only manslaughter; is the man guilty of murder by reason of the good warrant, of which he knew nothing? It would seem that there are strong reasons for saying that he would not be guilty of murder. The ground on which the killing an officer is murder is that the killer is wilfully setting the law at defiance, and killing an officer in the execution of his duty. The ground on which the killing of an officer whilst executing an unlawful warrant is manslaughter is that every man has a right to resist an unlawful arrest, and that such an arrest is a sufficient provocation to reduce the killing to manslaughter. In the supposed case the killer would not be setting the law at defiance, but would be resisting what appeared to him to be an unlawful arrest; and the actual provocation would be just as great as if the bad warrant alone existed. It is of the essence of a warrant that "the party upon whom it is executed should *know* whether he is bound to submit to the arrest:" (Per Coltman, J., in *Hoye v. Bush*, citing *Rex v. Weir*, 1 B. & C. 288.) And where an arrest is made without a warrant, it is of the essence of the lawfulness of the arrest that the party arrested should have either express or implied notice of the cause of the arrest. Now where a constable in the supposed case arrests on the void warrant, the party arrested has no express notice of the good warrant, for it is not shown, and no implied notice of it, for every thing done by the constable is referable to the void warrant; and, besides, the conduct of the constable is calculated to mislead, and it may well be that the party is innocent, and knows nothing of the offence specified in the valid warrant. Lastly, it must be remembered that in such a case the criminality of the act depends upon the intention of the party arrested, and that intention cannot in any way be affected by facts of which he is ignorant.

On the other hand, it would seem to be clear that, where an officer has two or more warrants, one of which is bad, and he shows all to the party to be arrested, who kills the officer in resisting the arrest, it would be murder; for he was bound to yield obedience to the lawful authority.

Next, as to third persons interfering. If the officer has a person in custody under a good and bad warrant, that is clearly a lawful custody, and consequently the killing of an officer by third persons, under such circumstances, would clearly be murder. In fact, where an officer has a man in custody under a lawful as well as an unlawful authority, the latter, being in point of law a complete nullity, may be wholly thrown aside in considering the lawfulness of the custody. Suppose, then, a constable were to apprehend a person on reasonable suspicion of having committed a felony, and take him before a justice, who either remanded or committed him by a void warrant, it seems clear that, if the constable were killed by a third person whilst he had the man in custody, it would be murder; for, though the warrant was bad, he had a lawful authority to detain on the reasonable suspicion.

The points as to the law on *habeas corpus* in criminal cases require explanation. It is said "the rule of law is that a person in custody in this country upon a criminal charge, with a view to trial, is not, by reason of any irregularity in his arrest, entitled to discharge upon *habeas corpus* without trial." And again, "in a case of felony, there could be no discharge from custody before trial upon the ground of mere informality in the warrant."

Now, the practice and law upon *habeas corpus* in indictable cases before trial is this: If the prisoner has been committed for trial by a justice, a *certiorari* directed to the justice to return the depositions must be obtained, and the case is decided upon the depositions, whenever the commitment is void; for though the warrant of commitment is informal, yet if, upon the depositions returned, the Court see that a felony or misdemeanor has been committed, and that there is a reasonable ground of charge against the prisoner, they will not discharge him: (*Rex v. Marks*, 3 East R. 157.) But if the warrant be void, and the depositions either disclose no indictable offence, or fail to show any reasonable ground of charge against the prisoner, the Court will discharge him. So, if the prisoner has not been taken before a justice, but the return or affidavits show that he is in custody for any indictable offence, the Court will not discharge him. Thus, where a return showed that the prisoner was in custody on suspicion of a murder, the Court refused to discharge him; Lord Tenterden saying, "I certainly do not recollect any instance

of a writ of *habeas corpus* to bring up persons who were in custody for inquiry only, and if we could see that these persons are unlawfully in custody we must discharge them. But nothing of that kind appears. It is lawful for any person to take into custody a man charged with felony, and keep him until he can be taken before a magistrate." And the Court committed the prisoner to the marshal of the Marshalsea to be taken before some competent authority to be examined: (*Ex parte Krans*, 1 B. & C. 258.) So where it appeared by affidavits that a bill of indictment for perjury had been found against the prisoner, the Court refused to discharge her (*Ex parte Scott*, 9 B. & C. 446); and this case has settled the rule that the law as to *habeas corpus* extends to every indictable offence; for in it the contention was that that law did not extend to misdemeanors, and that if it were extended to that case, it must be held applicable even to cases of common assault; and Lord Tenterden, as we have seen, declared that that consequence would certainly follow, and the prisoner was remanded.

These authorities clearly prove that where, independently of a void commitment, there is a sufficient criminal charge, either in the depositions or otherwise, the Court will not discharge; but that where there is no sufficient criminal charge they will. They, therefore, do fully bear out the position for which they are referred to in the paper in the *Times*, that Brett, independently of the warrant of remand, had full authority to detain Kelly. But it also seems to me that *Ex parte Scott* tends very strongly to prove that the right of a private person to arrest a person found committing a misdemeanor extends to every misdemeanor; for that case shows that in no case of misdemeanor would the Court discharge the prisoner, which proves that the custody is lawful. Now, if the custody was lawful when the *habeas* was obtained, or when the prisoner was remanded, how can it have been unlawful at any previous time? The custody has from the first been for the same cause, and has in no respect changed in its character. Its lawfulness, therefore, at one time necessarily leads to the conclusion that it was always lawful. Of course this must be limited in general to the cases where the custody has all along been in England: where (as in *Scott's* case) the original arrest was abroad, the custody, whatever it may have been previously, became a lawful custody as soon as the

prisoner came into England, at which time the prisoner came within the jurisdiction of the English law.

Although the party arresting must catch the offender in the act of committing the misdemeanor, he is not restricted to apprehending him whilst committing the offence—he may apprehend him upon the spot immediately after the offence, or upon fresh pursuit if he run away. In *Rex v. Howarth* (R. & M. C. C. R. 207) the prisoner was seen in an outhouse and a noise was heard among the boards there, the owner was fetched, and, after searching several places, the prisoner was found in another person's garden crouched down under a tree; the jury found only an attempt to commit a felony, and it was held that, as the prisoner was seen in the outhouse, and was taken on fresh pursuit before he had left the neighbourhood, it was the same as if he had been taken in the outhouse, or in running away from it: (see *Rex v. Hunt*, already cited: *Hanway v. Boulton*, 1 M. & Rob. 14; 4 C. & P. 350; and *Rex v. Fraser*, R. & M. C. C. R. 419.)

But the arrest must be upon fresh pursuit, and not after a lapse of time during which all pursuit has been abandoned. In *Rex v. Gardener* (R. & M. C. C. R. 390), the prisoner was seen by a constable playing at thimble-rig between two and four p.m. in a fair; the constable then tried to arrest him, but he escaped, and the constable could not find him till nine p.m., when the constable attempted to arrest him, and it was held that the arrest could not lawfully be made, as it was not on fresh pursuit (Addenda R. & M. xii.), though the jury found that the prisoner knew that the constable was attempting to arrest him for the offence committed in the fair: (see also *Reg. v. Walker*, Dears. C. C. 358.)

Treason is felony and something more; wherever, therefore, there is authority to apprehend for felony, there is certainly authority to apprehend for treason. But a distinction may here well be noticed between them. In the case of felony there may be a great many things done for the purpose of accomplishing the felony, which do not amount to felony, as nothing amounts to felony, except what constitutes the person doing it either a principal or accessory before or after the fact. A recent case well illustrates what I mean. Williams gave poison to Edwards, telling him that it was poison, and that he wanted to kill

Vaughan, and directed him to go to Vaughan's house with it, and put it in some beer, and so poison Vaughan. Edwards went to Vaughan with the poison, told him what had passed, and gave up the poison. It was held that this was not the felony of attempting to administer poison within the 1 Vict. c. 85, s. 3: (*Reg. v. Williams*, 1 Den. C. C. 39.) But the same prisoner was afterwards convicted before that great Judge, Cresswell, J., for the misdemeanor of doing the acts with the felonious intent: (*Dears. C. C. 547.*) But to provide weapons, powder, or poison, to put the King to death is treason: (1 Hale P. C. 108.) So to take a pistol, powder, and pellets, and to go towards the place where the Queen is, with a traitorous intent, is an overt act of treason: (*Somerville's case*, 1 And. 104.) Indeed, taking any step in order to carry out a treasonable design is an overt act. Thus, taking a boat at the Surrey-stairs in Middlesex, in order to go on board a smack, with papers to be used in France for treasonable purposes, is an overt act in Middlesex: (*Lord Preston's case*, 4 St. Tr. 406); for "every step taken for those purposes is an overt act": (*Fost. 196.*) Nay, it has even been held that where the prisoner had said in Portugal, "I will kill the King, if I may come unto him," and he afterwards came into England for the same purpose, he was guilty of treason: (*Crohagan's case*, Cro. Car. 332), on the ground that coming into England for the purpose of killing the King was an overt act: (*Fost. 202, 203.*) Now, let us consider how this distinction between treason and felony may affect the authority to arrest. Let us first suppose that there is a number of persons who have committed treason, and that, one or more of them being imprisoned for it, the others combine to break open the prison and rescue them, in order that they may all prosecute their treasonable purposes, and that those who are in prison are participating in these designs. If the rescue were effected, there is no doubt all would be guilty of treason (as persons who rescue actual traitors are guilty of treason, if they know them to be such, although they have not previously joined in their treason). But suppose, instead of affecting their purpose, a barrel of powder is brought and exploded for the purpose of effecting the designs I have mentioned by blowing down the wall of a yard of the prison, the authorities I have cited seem to show that the procuring the

powder, the taking it to the prison, and the exploding it there, in fact, to use the words of Foster, "every step taken for those purposes was an overt act of treason." Every private person, therefore, not only might, but would be bound to, arrest any one of the persons doing any of these acts, if he had reasonable ground to believe that they were done for the purposes in question.

But, on the other hand, if the offenders were imprisoned for felony only, the breaking open the prison and rescuing the offenders would only be felony, and consequently the attempt to break open the prison for that purpose would only be an attempt to commit a felony, and that attempt would be confined to the explosion, and would not include the steps preparatory to it. This will suffice to show how important it was to point out clearly that any private person has authority to arrest anyone caught in the act of attempting to commit any felony, and was indeed the principal cause which induced me to write this paper.

It must be observed also that a criminal act coupled with criminal or felonious intention constitutes in many cases a misdemeanor, although the act be not so proximate to the intended offence as to constitute an attempt to commit it. *Williams's* case already cited affords one instance; but it is impossible to lay down any definite rule as to this class of offences, as each must depend upon its particular circumstances. The best guide on this subject is the doctrine laid down by Lord Mansfield in *Rex v. Scofield* (Cald. 397), which in *Rex v. Higgins* (2 East R. 22) Lawrence, J., said "comprises all the principles of the former decision," that "so long as an act rests in bare intention it is not punishable by our law, but immediately when an act is done, the law judges not only of the act done, but of the intent with which it is done, and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable." This is a plain and clear rule, and has been constantly acted upon. Thus, unlawfully having counterfeit coin with intent to utter it is no offence, but obtaining such coin with intent to utter it is a misdemeanor, and the same distinction has been held as to obscene prints: (*Reg. v. Dugdale*, 1 E. & B. 435.) Upon these authorities it would seem that procuring powder or arms

with intent to commit a felony is a misdemeanor, for the procuring is an act done, and it is coupled with a criminal intent. And here it is right to notice a dictum or two which require to be properly understood.

In *Reg. v. Collins* (L. & C. 471) the prisoners were charged with an *attempt* to commit a felony, and Crompton, J. is reported to have said "Suppose a man were to buy a pistol with intent to rob and murder another in a lane, and the man who was to be murdered never came, the intent would not be enough without the attempt." This is equivocal; as it might mean that it would not be enough to constitute a misdemeanor, as well as an attempt to commit a felony. But all doubt is removed by the much clearer statement in the report in 10 L. T. Rep. N. S. 581. Crompton, J.—"Suppose a man were to go down a lane armed with a pistol, with the intention to rob a particular person whom he expected would pass that way, and the person does not happen to come, would that be an *attempt to rob the person*?" And this is quite in accordance with what Maule, J., said in *Reg. v. Eagleton* (Dears, C. C. 525), "The doubt may arise *what is an attempt*? Must it not be a proximate attempt? Does a man intending to murder, *attempt* to do so, if he buys a dagger or poison, but uses neither the one nor the other?"

It is clear that neither of these learned Judges did more than speak of an *attempt* to commit an offence, and it seems to me that they intended to put the case of what they considered to be an act coupled with a criminal intent, which did not amount to an attempt to commit an offence, and that their attention was not directed to the question whether that would constitute a misdemeanor, and their *dicta* certainly have no tendency to show that it would not.

In this class of misdemeanor, which do not amount to an attempt to commit a felony, the right of a private person to arrest those who are caught committing them, depends upon the question whether the conclusion that I have drawn from the cases be right or not, viz., that that right extends to all misdemeanors where the offender is caught in the act.

The main object of the Treason-Felony Act was to enable the Crown to treat such persons as felons whose offences might in strictness be held to be treason, in cases where the offences were of a minor character, and it in no way affects the duty or right

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to apprehend persons guilty of treason within the 25 Edw. 3, c. 2, or the unrepealed part of the 36 Geo. 3, c. 57.

There are sundry other points which I might advert to, but this paper has already extended to a much greater length than I anticipated, and it is time to conclude.

ATTEMPTS TO COMMIT CRIMES AND INDICTABLE CRIMINAL ACTS.

In my paper upon the power to arrest in cases of misdemeanor, I touched upon attempts to commit offences and criminal acts, which amounted to misdemeanors, though they did not amount to attempts to commit offences; but I did not go so fully into the nature of either of these classes of offences as I should have done if I had been writing a paper upon them. As, however, questions frequently arise respecting these offences, and as it is desirable to place them in as clear a light as may be, I will proceed to consider them as carefully as I can.

It may be as well to premise that all acts which are done with a criminal intent, and are such as may subject those who do them to prosecution by indictment, may properly be divided into three classes: first, those which actually effect the crime itself; secondly, those which fall short of effecting the crime, but approach so nearly to it as to constitute attempts; and lastly, those which are too remote from the crime itself to constitute attempts, but nevertheless are indictable as acts done with a criminal intent. With the crimes themselves, and with those who are participators in them, either as principals or accessories, this paper has nothing to do, except in so far as occasional reference to them may be made in order the better to illustrate any point affecting either of the other two classes.

On the whole, it would seem to be the more expedient course to deal with acts done with a criminal intent before taking attempts to commit crimes into consideration, as a clear insight into the law affecting the former may help to give a clearer insight into the law relating to the latter.

In the first place, it may be well to explain a misapprehension, which has long prevailed, as to whether an act was necessary in

addition to a criminal intent in order to constitute an indictable offence at common law; as considerable doubt seems to have arisen from the inaccurate use of the expression *voluntas reputabatur pro facto*.

Bracton, treating of homicide *per infortunium*, says that if a man throwing a dart at a wild beast, or playing with his companion, and striking him *jocosâ levitate*, kill a man, not, however, with the intention of killing, he ought to be acquitted; "*quia crimen non contrahitur nisi voluntas nocendi intercedat, et voluntas et propositum distinguunt maleficium, et furtum omnino non committitur sine affectu furandi;*" and he afterwards adds, "*In maleficiis autem spectatur voluntas et non exitus, et nihil interest occidat quis, an causam mortis præbeat:*" (Bracton, Lib. III., c. 17, p. 136, *b.*) Now, it is quite clear from the context and the words used that Bracton did not mean a bare intention, or plotting of the death of a man by the offender; but, as Lord Coke says, "*He must causam mortis præbere;* that is, declare the same by some open deed tending to the execution of his intent, or which might cause the death:" (3 Inst. 5.)

Where a man's wife went away with her adulterer, and they compassed the death of the husband, and assaulted and struck him with weapons, so that he fell down as dead, but recovered; and they were indicted, and this special matter was found by verdict, it was adjudged that the man should be hanged and the wife burnt: (15 Edw. 2, tit. Coron. 383, cited 3 Inst. 5.) And Sir W. Beresford, C.J., of Common Bench, said that, before him and his companions, justices of oyer and terminer, a youth was arraigned for that he would have stolen the goods of his master, and went to his master's bed, and with a knife attempted with all his force to cut his master's throat, and, on a special verdict, he was adjudged to be hanged, &c., *quia voluntas reputabatur pro facto*. But Lord Coke adds in the margin, "*Sed hæc voluntas non intellecta fuit de voluntate nudis verbis aut scriptis propalata, sed mundo manifestata per apertum factum, id est cum quis dederat operam, quantum in ipso fuit, ad occidendum; et sic de similibus;*" and he adds; "so it was not a bare compassing or plotting of the death of a man, either by word or writing (but) by such overt deed as is aforesaid, to manifest the same." Lord Coke, however, afterwards says that, before the Statute of Treason (25 Edw. 3, c. 2), "if a man had compassed

or imagined the death of the King, and had declared his compassing or imagination by words or writing, this had been high treason, and a sufficient overture by the ancient law :” (3 Inst. 5.) Foster has, however, satisfactorily shown that none of Lord Coke’s authorities bears out his position, and that the true explanation of them is that they refer to a meeting of conspirators, and a consultation between them for traitorous purposes : (Fost. 205, 206.) And thus Lord Coke is made consistent with himself, for, in 3 Inst. 140, he says, that “compassings or imaginations against the King by word, without an overt act, is a high misprision ;” and “in case of high treason, he that knoweth it before it be done, and assenteth unto it, is *particeps criminis*, and guilty of treason.”

By the 25 Edw. 3, stat. 5, c. 2, “if percase any man of this realm ride armed covertly or secretly with men of arms against any other to slay him, or rob him, or take him or retain him till he hath made fine or ransom for to have his deliverance, it shall be judged felony or trespass (*i.e.*, misdemeanor), according to the laws of the land of old time used, and according as the case requireth.” On which enactment Lord Coke (3 Inst. 161) remarks : “Concerning the point of felony, it must be observed that at the making of that statute, and by the laws of the realm of old time used in such cases, when any purposed to slay, and declared it by such overt act, *voluntas reputabatur pro facto*, and so is this branch concerning that point to be understood.” It is plain, therefore, that a criminal purpose declared by an overt act was indictable at common law ; and it is also clear that in this passage Lord Coke applied the words *voluntas reputabatur pro facto* to a criminal intent so declared by an overt act.

In the 27 Ass. fol. 137, pl. 38, Shardhill mentioned a case where a thief had assaulted a man feloniously, with intent to rob him, and it was advised by all the council, except Stouf, that he should be hanged. And this case was cited and approved by Gascoigne, in the Year Book, 13 Hen. 4, fol. 7, pl. 20 ; and the 25 Edw. 3, fol. 85, pl. 33, is to the same effect.

Lord Hale says : “Although anciently an assault, to the intent to rob, or an intent to rob, was reputed felony *voluntas reputabatur pro facto* (25 Edw. 3, 42, which is a mistake for fol. 85, pl. 33 ; 13 Hen. 4, 7 ; per Gascoigne, 27 Ass. 38), yet the law is held otherwise at this day, and for a long time since the

time of Edward III., and therefore if A. lie in wait to rob B., and assault him to that purpose, and require him to deliver his purse, yet if *de facto* he hath taken nothing from him, this is not felony, but only a misdemeanor, for which he is punishable by fine and imprisonment:" (9 Edw. 4, 26, b, pl. 36; 1 Hale, 532.) So that Lord Hale plainly used the maxim *voluntas reputabatur pro facto* as including an act done with a criminal intent.

Hawkins says, "the bare intention to commit a felony is so very criminal that, at the common law, it was punishable as felony, where it missed its effect through some accident no way lessening the guilt of the offender" (1 Hawk. P. C. c. 25, s. 3); for which he cites *Rex v. Bacon* (1 Sid. 230; 1 Lev. 146). Bacon was indicted for offering 100*l.* to J. S. to murder Sir H. Grimstone, and, according to Levinz, the Court said, "anciently *voluntas reputabatur pro facto* in felony, and although it is not so now, it is a great offence and finable." But, according to Siderfin, the Court said that "although *voluntas reputabatur pro facto*, so as to punish it as felony, yet it cannot (*ceo ne poet*) be punished as a misdemeanor." But, according to both reports, Bacon was fined, &c. It is clear, therefore, that these *dicta* were applied to the act of offering the money coupled with the criminal intent; and, as Bacon was sentenced, the report in Siderfin must be erroneous. Hawkins also refers to Kelyng 24; but neither at that page nor elsewhere in Kelyng can I find any passage which bears on the question. Hawkins adds, "But it seems agreed, at this day, that felony shall not be imputed to a bare intention to commit it; yet it is certain that the party may be very severely fined for such an intention." For which he cites *Bacon's case* (1 Lev. 146) (which requires, as we have seen, an act coupled with such an intent) and *Rex v. Cowper* (5 Mod. 206), which is to the same effect; for there the prisoner was indicted for hiring a boat for twenty guineas, *falsò, malitiosè, et proditoriè*, to assist the King's enemies. Curia: "The very intention to commit treason is regarded in the law, and any preparation to assist the King's enemies is a prejudice to the public, and therefore an offence at common law. *Our actions are governed by intentions, as qualified by them; so that in divers cases the intention makes the act more or less criminal;*" and the prisoner was heavily fined.

The result of this long—but I trust not too long—examination of the old authorities is to clear up the matter completely. A mere intent never was indictable by the common law; consequently the expression *voluntas reputabatur pro facto* was inaccurately applied. But where there was not only an intent, but an attempt to carry that intent into execution, the offence was held at the common law to be as great as if the intended crime had been perpetrated; and I think rightly so, for as the guilt of the offender depends upon his criminal intention and his acts, the amount of his criminality when he has done all that in him lies to effect his purpose is identically the same, whether his attempt succeed or not. And it is not unworthy of remark that in the cases of attempts to rob and murder, the legislature has expressly restored them to the class of felony, and some of them were till recently punishable with death, which tends to show that the original common law rule was at least as good as treating them as misdemeanors only.

Lastly, these old authorities tend very strongly to show that any act coupled with a criminal intent was always indictable at common law, and the statute of the 25 Edw. 3, before cited, plainly shows that such acts were not confined to what amounted to attempts to commit crimes, especially when it is remembered that the same statute required an overt act in treason, and that many acts have been held to be overt acts within that statute which, if the offence had been felony, would not have amounted to attempts.

We may now proceed to the cases in which acts done with a criminal intent have been holden to be indictable as misdemeanors.

Where an information stated that a deed was produced on the trial of a cause, by which a verdict was obtained for the defendant, and that Johnson agreed with another person to give him 350*l.* to prove that the said deed was forged, which was stated to be done *malitiosè*, with the other usual adverbs, and Johnson was convicted, it was held that this was a misdemeanor; for witnesses ought to come unbiassed, and not affected by money; and though this was not subornation of perjury, it was an endeavour to procure one to get another to prove a deed forged: (*Rex v. Johnson*, 2 Show. R. 1.)

Where an information alleged that the defendant unlawfully

and corruptly promised to pay W. H., who had a vote in an election of the mayor of a town, 500*l.* upon condition that he would give his vote in a certain way, it was objected that, if the defendant made such a promise, it will be no crime without showing the fact done, that the money was paid and accepted by W. H. But the Court were of opinion that to bribe persons, either by giving money or promises, to vote at elections of members of corporations, which are created for the sake of public government, is a misdemeanor: (*Rex v. Plympton*, 2 Lord Raym. 1377.)

By the 8 & 9 Will. 3, c. 26, s. 1, any person who knowingly had in his possession, without lawful authority or excuse, any instrument which would make the figure of both or either of the sides of any gold or silver coin, was guilty of treason. A count alleged that the prisoner, without lawful authority, had in his possession two iron stamps, each of which would make the figure of one of the sceptres made on half-guineas, with intent to make the impression of sceptres on sixpences, and to colour them of the colour of gold, and utter them for half-guineas. Another count alleged that the prisoner had in his possession a piece of silver, coloured of the colour of gold, and made to resemble a half-guinea, with intent to utter it. On the case being brought into the King's Bench, after conviction Lord Hardwicke, C. J., said: "As to the first part of the indictment, I doubted whether it was not high treason within the 8 & 9 Will. 3, c. 26, s. 1; but it is not at all clear it would be so, because this is only to stamp part of one side of the coin, viz., putting sceptres. Then is it a misdemeanor at common law? And it did not occur to me that having in one's custody, without any act done, was a misdemeanor. As to the second part, I doubted whether any precedent could be found to show that the bare having counterfeit money in one's possession with intent to utter it, without uttering it, was an offence." But the three other Judges, in the absence of the Chief Justice, held the conviction right on the first count. Lee, J.: "It is certain that a bare intention is not punishable, and yet, when joined with acts whose circumstances may be tried, it is so; so an action innocent in itself may be made punishable by an intention joined to it, as loading wool with intention to transport it, as Lord Hale says: (1 Hale P. C. 229.) Now, the 8 & 9 Will. 3, c. 26, has considered the

having as an act, for by that statute it is treason to have knowingly any instrument, &c., in his possession; and though the word 'knowingly' is added, yet that is an act of the mind only; and the only act capable of trial in the offence against the statute is the having in possession. *All that is necessary in this case is an act charged and a criminal intention joined to that act:*" (*Rex v. Sutton*, C. T. H. 370; 2 Str. 1074.) This case has been since overruled, as we shall see; but it is clear that it was decided upon the true principle, though that principle was not properly applicable to the case, according to the subsequent decisions.

It has long been settled that a man cannot be guilty of arson at common law by setting fire to a house of which he is in possession as tenant: (*Holmes's case*, Cro. Car. 376.) But if the house so set fire to be in a town, or so near to other houses as to create danger to them, it is a great misdemeanor. In some cases the indictment has laid the setting fire to be with intent to burn the adjoining houses (*Holmes's case*); but in others the indictment has merely stated that the houses were adjoining to that set fire to by the prisoner. And such indictments are grounded on the fact that such an act must necessarily cause danger and terror to the neighbourhood.

In *Rex v. Scofield* (Cald. 397), the indictment alleged that the prisoner, maliciously intending to set fire to the house of J. Ramsay, of which the prisoner was possessed for a term of years, put a lighted candle into a closet of the house, which was contiguous and adjoining to dwelling-houses in New Bond-street, with intent to burn the house of the said J. Ramsay; and this count was held good after verdict, and Lord Mansfield, C. J., said: "So long as an act rests in bare intention it is not punishable by our laws; but immediately when an act is done, the law judges not only of the act done, but of the intent with which it is done; and if it is coupled with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable." And his lordship expressly approved of the principles upon which *Rex v. Sutton* was decided, and did not intimate any doubt as to the correctness of that decision.

In *Rex v. Higgins* (2 East R. 5), a count alleged that the prisoner did falsely, wickedly, and unlawfully solicit and incite

J. D. to take, embezzle, and steal a quantity of twist, the property of his masters; and, upon error after sentence, it was objected that a bare solicitation or incitement to commit an offence was not indictable, unless it were accompanied by some overt act towards carrying the intent into execution; but it was held that the solicitation was an act; the offence did not consist in mere intention; for in soliciting J. D. to commit the felony, the prisoner did an act towards carrying his intent into execution, and Lawrence, J., fully adopted the rule laid down by Lord Mansfield in *Rex v. Scofield*.

In the preceding case several older cases were approved. One was a case before Adams, B., tried at Shrewsbury, where the Judges unanimously held that an attempt to suborn one to commit perjury was a misdemeanor. Another was an indictment charging that the defendant, knowing that J. C. was indicted for forgery, endeavoured to keep away a material witness for the Crown: (*Rex v. Lady Lawley*, Fitzg. 263.) A third was an indictment for soliciting one to kill the Chevalier d'Eon. And a fourth was an information for an attempt to influence a jurymen in giving a verdict: (*Young's case*.)

There is a class of cases which well illustrates and supports Lord Mansfield's rule in *Rex v. Scofield*, and by which it is settled that procuring base coin with intent to utter it, is a misdemeanor (*Rex v. Fuller*, R. & R. 308); but that having base coin in possession with intent to utter it is not, on the ground that procuring is an act done, but that having in possession cannot be considered as such an act. A second count charged the prisoner with having counterfeit coin in his possession, knowing it to be counterfeit, with intent to circulate it. At a meeting of the Judges "they relied much upon the authority of *Rex v. Sutton*, and the cases there cited, in forming their opinion, and were then inclined to think this a misdemeanor. But, on considering the case again, the majority of the Judges seemed to be of opinion that *having in his possession*, with the terms '*knowingly*,' &c., annexed to it, could not be considered an act, and that an intent without an act was not a misdemeanor, and they considered *Rex v. Sutton* as untenable:" (*Rex v. Heath*, R. & R. 184.) And in a subsequent case the Judges were unanimously of opinion that a similar count charged no offence: (*Rex v. Stewart*, R. & R. 288.) Indeed the question seems to be

fully settled, and the principle has been applied to the case of indecent prints. Thus it has been held that the procuring indecent prints, with intent to publish them, is a misdemeanor; for the procuring is an act done in the commencement of misdemeanor, the misdemeanor being the wicked offence of publishing obscene prints. But preserving and keeping such prints in possession with a like intent is not a misdemeanor, for it is an intent unaccompanied by any act, and the prisoner might have procured them without any intent to publish them, and have afterwards conceived that intention: (*Dugdale v. The Queen*, 1 E. & B. 435, in which the preceding cases as to coin were fully recognised.)

But where on searching a prisoner a quantity of bad shillings inclosed in paper was found in his breeches' pocket, and another packet in his waistcoat pocket, and each parcel contained about twenty bad shillings carefully wrapped up in soft paper, and separated from each other by folds of similar paper; it was held that this possession, unaccounted for, and without anything to induce a belief that the prisoner was the maker, was evidence of procuring with intent to utter: (*Rex v. Fuller*, R. & R. 308.) And in a previous case, where the prisoner had delivered a box packed up, containing a very large number of bad shillings and sixpences, at a coach-office to the book-keeper, the Judges seem to have been of opinion that these facts afforded grounds for a good indictment, by stating that the prisoner acquired or procured the bad money with intent to circulate it, or packed it up or delivered it to the book-keeper, with intent to circulate it: (*Rex v. Heath*, R. & R. 184, note a.)

In *Rex v. Vaughan* (4 Burr. R. 2494) the Court of King's Bench granted a criminal information against Vaughan for sending a letter to the Duke of Grafton, then First Lord of the Treasury, containing an offer to pay 5000*l.* into the hands of Mr. H. Newcome, to be delivered by him to the person who should procure a patent of the reversion of the office of the Clerk of the Supreme Court of the Island of Jamaica, for the lives of three persons; which office was in the disposition of the King, and passed by a grant under the Great Seal. And the Court held that a great officer at the head of the Treasury, and in the King's confidence, selling his interest with the King in procuring an office, would be guilty of a crime at common law; that

wherever it is a crime to take, it is a crime to give; they are reciprocal. And in many cases, especially in bribery at elections to Parliament, the attempt is a crime; it is complete on his side who offers it. And so also must an offer to bribe a privy councillor to advise the King to grant an office to any person: (See the indictment in this case, 3 Ch. C. L. 683, which alleged the sending of the letter, &c., but did not in terms allege an attempt to bribe.)

Where an indictment alleged that the defendant, intending to do great bodily harm to R. G. Thomas, and to break the peace, sent to Thomas a scandalous and malicious letter, which charged him with having behaved like a blackguard, with intent to provoke Thomas to challenge the defendant, it was objected that, "although the sending a challenge to fight may, on account of its direct and immediate tendency to a breach of the peace, be an indictable offence, yet that a mere endeavour to provoke a person by a letter so to do, such endeavour, not in itself having a direct and immediate tendency to a breach of the peace, nor being alleged to be done with that intent, but having only a tendency to provoke a challenge, and a challenge having only a tendency to a breach of the peace, and not being itself a breach of the peace, was too remotely dangerous to the public peace to be the subject of indictment as a substantive misdemeanor." But the Court held that, "although the intended effect may not have been produced, yet the means calculated and likely to produce such an effect have been used. The letter was as much *an act done towards the misdemeanor meant to be accomplished*, namely, a challenge, as it was in *Rex v. Vaughan*, where the misdemeanor meant to be accomplished by the letter offering to bribe a minister of state, was the inducing such minister corruptly to recommend to an office of public trust: (*Rex v. Philips*, 6 East R. 424.)

We will now take the case of *Reg. v. Roberts* (Dears, C. C. 539), which requires a careful examination in order to prevent its leading to the supposition that an act done with a criminal intent must be proximate to the offence in order to make it indictable. By the 37 Geo. 3, c. 126, s. 2, any person counterfeiting any coin, not the coin of this realm, but resembling any coin of any foreign prince or state. was made guilty of felony. A count stated that the prisoner made two dies, upon one of

which was engraved the figure of one of the sides of a silver half-dollar of the republic of Peru, and upon the other side of which was engraved the figure of the other side of the said coin, with intent by means of them feloniously to make counterfeit Peruvian half-dollars; and so the jurors said that the prisoner unlawfully did attempt feloniously to counterfeit Peruvian half dollars. There were several other counts varying the statement as to the acts of the prisoner; but all alleged that he attempted to counterfeit coin. The prisoner had caused to be made by a die-sinker the necessary dies for making a counterfeit half-dollar of the republic of Peru; the dies could not alone produce it, a press, copper blanks, galvanic battery, and a preparation of silver being also necessary for that purpose; but the prisoner was not proved to have procured either press, blanks, or preparation of silver. The jury found that he intended to procure the dies and other necessary apparatus in order therewith to coin counterfeit Peruvian half-dollars, and to make a few of them in England to try whether the apparatus would answer before sending it out to Peru, to be there used in making the counterfeit coin; and upon a case reserved upon the questions, whether the prisoner under these circumstances was guilty of an offence against the laws of this country, and whether any of the counts alleged such offence, it was contended that the acts found did not amount to an attempt to make counterfeit foreign coin, and that the acts, although coupled with intent to coin in England, did not amount to an offence. There was no foundation for the proposition that any act done towards the commission of a felony or misdemeanor is an indictable offence. The act must be immediately connected with the offence. And *Reg. v. Eagleton* (Dears, C. C. 515), was cited to show that acts remotely leading to the commission of an offence are not to be considered as attempts to commit it. And the doctrine that an act, coupled with an intent, is indictable was denied, and *Rex v. Sutton* and *Rex v. Heath* were said not to be law. But the Court, without hearing the counsel for the Crown, held the conviction right. Jervis, C.J.: "This is not an indictment for an attempt to commit a statutable offence, as was the case in *Reg. v. Williams* (1 Den. C. C. 359), where the charge was an attempt to administer poison. Here there is no direct attempt to coin, but the indictment is founded on a criminal intent,

coupled with an act immediately connected with the offence. It is difficult, and perhaps impossible, to lay down a clear and definite rule, to define what is, and what is not, such an act done, in furtherance of a criminal intent, as will constitute an offence; at all events, I shall not attempt to do so. Many acts, coupled with the intent, would not be sufficient. For instance, if a man intends to commit a murder, and is seen to walk towards the place of the contemplated scene, that would not be enough; but although it is sometimes difficult to say whether a case comes within or ranges without the line, it is not difficult to say that the act done in this case is one which falls within it." Parke, B.: "I quite agree with the law laid down in *Reg. v. Eagleton*, that an attempt at committing a misdemeanor is not an indictable attempt unless it is an act directly approximating to the commission of an offence, and I think this act is a sufficient approximation." Wightman, J.: "No doubt the act was done with intent to commit a felony, and is sufficient to support such an indictment as the present one. It is an act immediately connected with the commission of the offence; and in truth the prisoner could have no other object than to commit the offence." Cresswell, J., agreed "that the act done in this case is sufficiently proximate to the offence." Now it seems clear that Jervis, C.J., treated the indictment as simply charging acts done with a criminal intent; but that Parke, B., clearly treated the indictment as charging an attempt to coin; and the judgments of Wightman, J., and Cresswell, J., are quite consistent with that view; and that is quite in accordance with the indictment. It is very remarkable that the form of the indictment was never referred to expressly by any one. It is clear, however, that, in whatever way this decision may be viewed, it merely amounts to a determination that the prisoner was rightly convicted upon the evidence adduced on the trial. No rule as to the proximity of the act to the offence was laid down; on the contrary, the attempt to do so was studiously avoided. There is not even a single *obiter dictum*, still less any decision to support the proposition that an act done with a criminal intent must be immediately connected with the intended offence. On the contrary, all the authorities, as well as the principle and reason on which they are founded, are the other way. The only questions in a case of this kind are, "Did the prisoner intend to

commit, or to cause to be committed, an indictable offence, and did he do an act with that criminal intent?" Proximity to, or remoteness from, the intended offence has nothing at all to do with the latter question. *

The law of treason may well serve to confirm our views. In speaking of this law Foster says: "It considereth the wicked imaginations of the heart in the same degree of guilt as if carried into actual execution from *the moment measures appear to have been taken to render them effectual*; and, therefore, if conspirators meet and consult how to kill the king, though they do not then fall upon any scheme for that purpose, this is an overt act of compassing his death; and so are all means made use of, be it advice, persuasion, or command, to incite or encourage others to commit the fact, or to join in the attempt, and every person who but assenteth to any overtures for that purpose will be involved in the same guilt:" (Fost. 195.) So to provide weapons, powder, or poison to put the king to death is treason (1 Hale, P. C. 108); in fact, every step taken in order to carry out a treasonable design is an overt act: (Fost. 196: *Somerville's case*, 1 And. 104; Fost. 202, 203.) Now, these authorities lead to the conclusion that, whatever in treason would amount to an overt act, would in inferior offences be indictable; for the ground upon which these authorities rest is, that there is an act coupled with a criminal intent; and the only difference between such acts in case of treason and inferior offences is, that the character of the offence would differ, and lead to different punishments.

There are some authorities in treason which make me pause before I assent to the position that going to a place with intent to commit a murder is not an indictable offence. In *Lord Preston's case* (4 St. Tr. 406), it was objected that no overt act was proved in Middlesex, where all the overt acts were laid, for he was taken with the papers containing a scheme for invading the kingdom in Kent. But the Court told the jury that if they believed that his lordship had an intention of going into France, and carrying those papers thither for the purposes charged in the indictment, "his taking boat at Surrey stairs, which are in Middlesex, in order to go on board a smack which had been procured to transport him to France, was a sufficient overt act in Middlesex. *Every step taken for those purposes was an overt act*:" (Fost. 196.) Crohagan at Lisbon said, "I will kill the king

(meaning the King of England), if I may come unto him," and he afterwards came into England for the same purpose; and both Lord Hale (1 Hale, 116) and Foster (Fost. 202) agree that the coming into England was an overt act; and Foster says, "the words could not be so properly deemed an overt act of treason, as an evidence against the man out of his own mouth *quo animo* he came into England. The traitorous intention, proved by his words, converted an action, innocent in itself, into an overt act of treason:" (*Crohaghan's case*, Cro. Car. 332.) If the coming into England with a traitorous intent is an overt act of treason, how can it be otherwise than an indictable offence to go towards a place with intent to commit murder? The locomotion of the body is as much an act in the one case as in the other, and the evil intent is coupled with the act in the one case as much as in the other. No doubt a man may have an intent in his mind to commit an offence, and do an act, which will not be indictable; e. g., he may go to bed with an intent in his mind to commit a murder the next day. But this is widely different from going towards a place with intent to commit a murder, as this is a step towards committing the crime.

So in the cases of misdemeanor, where, as in treason, all are principals, it would seem that whatever would make a person a principal, if the misdemeanor were completed, would, if it were not completed, render him guilty of a misdemeanor in doing an act with a criminal intent. Thus, the prisoner, who made an affidavit in order fraudulently to obtain money out of the Court of Chancery, but was absent when the false pretence was made, was held to be a principal in obtaining the money: (*Reg. v. Moland*, 2 M. C. C. R. 276.) But if the fraud had not succeeded, he might have been indicted for making the affidavit with the criminal intent.

It would also seem to be clear that whatever would make a man an accessory before the fact, if the felony were committed, would, if it were not committed, make him guilty of a misdemeanor. In *Rex v. Higgins*, Grose, J., said: "If a robbery were actually committed, the inciter would be a felon. The incitement, however, is the offence, though differing in its consequences, according as the offence solicited, if it be felony, is committed or not." That is, if the felony be committed, the incitement is felony; if it be not committed, the incitement is a misdemeanor.

Foster says: "Whoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact. For what is there in the notion of commanding, hiring, counselling, aiding, or abetting, which may not be effected by the intervention of a third person, without any direct immediate connection between the first mover and the actor? A. biddeth his servant to hire somebody to murder B., and furnisheth him with money for that purpose; the servant procureth C., a person whom A. never saw nor heard of, to do it; is not A., who is manifestly the first mover or contriver of the murder, an accessory before the fact? It would be a reproach to the justice of the kingdom to suppose he is not:" (Fost. 125.) And he cites *The Earl of Somerset's case* (1 St. Tr. 335), where the Lord Chancellor directed the Peers triers, and all the Judges present concurred with him, that the only point in issue was whether the earl caused or procured the murder or not; and accordingly the earl was found guilty upon evidence which satisfied his peers that he had contributed to the murder by the intervention of his lady and of Sir J. Elwys and Franklin, who were themselves no more than accessories, without any proof that he had ever conversed with Weston, the only principal in the murder, or had corresponded with him directly by letter or message: (Fost. 126.) In this case, if the murder had not been committed, all who incited Weston would have been guilty of an indictable offence by doing acts with a felonious intent.

We may next consider attempts to commit offences.

What is an attempt to commit an offence? This is a question very much easier to ask than to answer; and as far as I am competent to judge, no general rule can be laid down upon the subject, but each case must depend upon its own particular circumstances. As the means by which, and the modes in which, crimes may be committed are innumerable, so the modes in which attempts to commit crimes may be made must be innumerable also; and not only so, but the nature of one attempt to commit a crime may totally vary from the nature of another attempt to commit the same crime. Thus, a murder may be committed by a single stab, and so an attempt to murder may be made by a single stab; whilst, on the other hand, a murder may be committed by administering small doses of poison at intervals during a considerable space of time, in such a manner that the

death is the result of the combined effect of all the poisonings, and would not have been caused by one or even the greater part of them. In such a case, if death had not ensued, although the poisoner might well be convicted of an administration of poison with *intent* to murder by proof even of one administration of poison, yet a single administration could not, perhaps, be considered a proof of an *attempt* to murder, both because the murder was not intended to be committed by it, and because it could not be committed by it. These supposed cases may serve to show under what varied circumstances attempts to commit offences may have to be considered, and yet these cases are confined to acts which would have actually been the means of committing the crime, if it had been effected. It seems, however, to be clear that wherever the act or acts done are such that, if they had produced their intended effect, the crime would have been completed, an attempt to commit that crime is proved; and, consequently, upon every charge of an attempt to commit an offence, the primary consideration would seem to be, whether the acts done by the prisoner could have effected the crime intended.

It is quite obvious, however, that attempts to commit crimes cannot be limited to such attempts as have just been mentioned; but that acts not necessarily forming the means, or even part of the means, of effecting the crime may, in some cases, suffice to prove an attempt to commit the crime, and the great difficulty is to determine where the line is to be drawn.

No assistance can be obtained from the dictionaries as to the meaning of the term "attempt," for the explanation that "to attempt" is "to try or to endeavour," is *idem per idem*, and helps not at all, and the better course will be to review the cases which have been decided, and see how far they may help us towards a description of what constitutes an attempt; or, if they fail to furnish such a description, how far they may serve as guides in any case that may arise.

By both sect. 3 and sect. 4 of the 1 Vict. c. 85, "whosoever shall, by *drawing a trigger, or in any other manner*, attempt to discharge any kind of loaded arms at any person," with any of the intents therein specified, was made guilty of felony. On an indictment, which contained counts on both these sections, it appeared that the prisoner either half or full cocked a pistol,

and pointed the muzzle at the prosecutor, and the finger of his right hand was on the trigger, but a bystander prevented the trigger from going back. Parke, B.: "The charge of felony cannot be supported, as it is not proved that the prisoner drew the trigger. The words 'in any other manner' in the statute mean something analogous to drawing the trigger, which is the proximate cause of a loaded arm going off. Suppose, for instance, you had a match lock, and put a match to it, and the gun did not go off; that would be a case within the act." And again: "The object of the act was to punish proximate attempts; that is, those attempts which immediately lead to the discharge of loaded arms. Therefore, if a person drew the trigger, and the gun was loaded, the offence would be complete, though the gun did not go off, and though (the cock) did not happen to strike the percussion cap." . . . "And so since the newly invented fire-arms, if a man with a hammer were to strike the cap, that would be felony under this act:" (*Reg. v. St. George*, 9 C. & P. 483.) This decision may, perhaps, be supported upon the ground that, as the statute had made the "drawing a trigger" an attempt in express terms, it must be taken to exclude an attempt to draw a trigger, otherwise an attempt to make an attempt would be within the act. I am well aware that Lord Wensleydale was, at a time later than this decision, of opinion that if a statute specified, as this does, one particular, and then added general words, the general words must be limited to things *ejusdem generis* with the single particular so specified. Now it is clearly settled by a multitude of cases, of which *Sandiman v. Breach* (7 B. & C. 96), may be considered as the leading one, that where a statute uses several words *ejusdem generis*, and then adds general words to them, these general words are to be limited to persons or things *ejusdem generis* with the persons or things previously specified; and the reason is that the specification of sundry persons or things *ejusdem generis* shows that the Legislature was providing for that particular class alone. Now this rule and the reason on which it rests are directly in the teeth of inferring from the mention of one thing that general words added to it must be limited to things *ejusdem generis*. It is very true that there were several decisions upon the words of the 9 Geo. 4, c. 31, s. 14, "*secret burying or otherwise disposing of the dead body*" of a child, which would tend to

support Lord Wensleydale's opinion, but these decisions were all overruled by *Reg. v. Goldthorpe* (2 M. C. C. 244), where it was held that any concealment of the body, whether intended to be final or temporary, was within the act: (*Reg. v. Farnham*, 1 Cox Crim. Cas. 349, per Parke, B.) And in *Salkeld v. Johnson* (1 Hall & Twells, 329), where the question turned upon the construction of the 2 & 3 Will. 4, c. 100, s. 1, which speaks of "any exemption from or discharge of tithes by *composition real or otherwise*," Lord Cottenham held that the words "by composition real or otherwise" were "tantamount to an enumeration of every possible ground of discharge." And this ruling is quite in accordance with the common usage of such expressions. If we talk of sending a letter "by post or otherwise," every mode by which a letter may be sent is plainly included. The proper construction, therefore, of the words, "by drawing a trigger or in any other manner," which are repeated in the 24 & 25 Vict. c. 100, ss. 14, 18, seems to be that they include any means whatever by which an attempt to discharge loaded arms can be made.

Where on a similar indictment the prisoner said to the prosecutor, "You are a dead man," took out a blunderbuss from his coat, and the muzzle of it was towards the side of the room where the prosecutor was; but it was not pointed at him, and not up to the shoulder, but as low as a person could hold it, and whatever the prisoner's intention was it was prevented by a bystander laying hold of him; it was held that an attempt to discharge the blunderbuss was not proved; there must be something more than the mere presenting of the blunderbuss, some act must be shown to have been done by the prisoner to satisfy the jury that he did in fact attempt to discharge the blunderbuss: (*Reg. v. Lewis*, 9 C. & P. 523.) This ruling entirely accords with what we have contended to be the right construction of the act.

On an indictment for attempting to administer poison, it appeared that the prisoner had put some salts of sorrel in a sugar basin, in order that the prosecutor might take it with his tea, and the prosecutor and his wife took some of it with their tea, and discovered that something was wrong, and this led to a discovery of the poison; Wightman, J., held that if the prisoner put the poison in the sugar intending that it should be taken,

that was an attempt to administer it: (*Reg. v. Dale*, 6 Cox Crim. Cas. 14.) The taking of the tea into the mouth by the prosecutor in this case was just the same in point of law as if the prisoner had poured it into the prosecutor's mouth.

Where a count charged that the prisoner falsely pretended to W. C. Nutman, a relieving officer, that he, the prisoner, had supplied certain loaves of bread to a pauper of a certain weight, which they were not, by means whereof the prisoner had attempted to obtain a sum of money from the guardians of the poor, and it appeared that the prisoner had contracted to supply the poor with loaves of bread of three and a half pounds each, at seven pence per loaf, but had in fact delivered to sundry paupers loaves which he knew to be deficient in weight; and the practice was for the relieving officer to give the paupers tickets specifying how much bread they were to receive, and they took these tickets to the prisoner, who ought have delivered the bread mentioned in them to the paupers, and in the ensuing week he returned the tickets to the relieving officer, and was thereupon credited in the account with the guardians with the weight of bread mentioned in the tickets, and the money would be paid to the prisoner at the time mentioned in the contract; and the prisoner had so delivered the tickets to the relieving officer, and obtained credit in the account for the amount of the number of pounds falsely represented to have been delivered: it was held, first, that the returning the tickets by the defendant was a representation by him that he had delivered a certain number of loaves of a certain weight; and, secondly, that he had been guilty of *an attempt* to obtain the money—Parke, B., saying: "We have had great doubt whether the obtaining credit in the account, though undoubtedly a necessary step towards obtaining the money, can be deemed an attempt to do so. The mere intention to commit a misdemeanor is not criminal. Some act is required, and we do not think that all acts towards committing a misdemeanor are indictable" (*i.e.*, as attempts).* "Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are; and if in this case after the credit with

* The context shows this must be the meaning, especially as the only question was whether the prisoner had been guilty of an attempt.

the relieving officer for the fraudulent overcharge, any *further step* on the part of the prisoner had been necessary to obtain payment, as the making out a further account, or producing the vouchers to the board, we should have thought that the obtaining credit in account with the relieving officer would not have been sufficiently proximate to the obtaining of the money. But on the statement in this case no other act on the part of the prisoner would have been required. It was the last act, *depending on himself*, towards the payment of the money, and therefore it ought to be considered as an attempt:" (*Reg. v. Eagleton*, Dears. C. C. 376, 515.)

This case is open to several observations. The indictment alleged the false pretences as the attempt, and did not mention the obtaining credit at all, the judgment proceeds upon the latter only. Now, it does not appear that the prisoner was present when the entry was made by the relieving officer, but rather the contrary; in either case, however, he was the innocent agent of the prisoner, and here arises a difficulty. Though not stated, it is clearly to be inferred from the case, that the book in which this credit in account was entered, would, in the regular course, have been produced to the guardians by the relieving officer, and that thereupon they would have authorised or made the payment, and there can be no doubt that the prisoner delivered the tickets to the relieving officer in order that this course might be pursued; the relieving officer, therefore, would be the prisoner's innocent agent in producing the account to the guardians, and the case would, on the supposition that he had so produced it, be just the same as if the prisoner had entered the account and produced it himself to the guardians. But the case itself was just the same as if the prisoner had entered the account in the book intending to produce it to the guardians, and the fraud had been discovered before he did so. And here it may be well to mention a case which may materially assist us in considering this state of things.

In *Rex v. Brisac* (4 East R. 163) the prisoners were indicted in Middlesex for conspiring to cheat the Crown by fabricating false vouchers of payments for provisions, and sending them to the commissioners for victualling the navy. All the acts in which the prisoners took part were done on the high seas, at Brassa Sound, or in Shetland; but a bill of exchange, and, as far

as can be inferred from the report, the vouchers also, had been sent by the post to the commissioners, and delivered to them in Middlesex; at all events, all of them had been delivered to them by innocent agents. It was held that the trial was well had in Middlesex, for "the delivering the vouchers and the presenting the bill of exchange to the commissioners in Middlesex were the acts of both the prisoners;" "for the persons who innocently delivered the vouchers were mere instruments in their hands for that purpose; the crime of presenting these vouchers was exclusively their own." Now, it seems clear that in that case the presentation of the vouchers, and not the putting them in the post, would be the attempt; and so it would seem that in this case the presentation of the book, and not the making the pretences to the relieving officer, or the entry in the accounts, would be the attempt.

The fallacy in the judgment seems to lie in the assumption that no further step on the part of the prisoner would have been necessary to obtain payment. That, no doubt, is correct as to any personal act; but the point is, that other steps on his behalf were necessary to be taken by an innocent agent; and here let it be observed that anyone who does any act, whether intentionally or not, which tends to further the design of a criminal, is that criminal's agent, and not only the agent of the person intended to be injured, but even the person intended to be injured, may be the prisoner's innocent agent. If a man set a spring gun intending that it may be let off by a person passing the place where it is set, and that person lets it off, he is the prisoner's innocent agent in so doing. Assuming, therefore, that the relieving officer was the agent of the guardians, C. might also be the agent of the prisoner in presenting the book, which was necessary in order to enable the prisoner to obtain the money, and clearly for his benefit alone. *Reg. v. Garrett* (Dears. C. C. 232) seems to be the converse of this case upon this point. There, the prisoner having obtained a circular letter of credit on the Union Bank for 210*l.*, altered it to 5210*l.*, and obtained several sums at St. Petersburg on drafts on the Union Bank from Messrs. Wilson, whose London house afterwards presented one of these drafts to the Union Bank, but payment was refused, as the fraud had been discovered. It was held that the London house were not the agents of the prisoner in pre-

senting the draft. Coleridge, J. (assuming the question to be whether, if the money had been obtained from the Union Bank, the case would have been within the act), said, "It is quite clear it cannot be said the defendant actually obtained the money himself, nor do I think he obtained it by means of any agent. The obtaining must be either by *the party's desire or intention, or for his benefit*; but there is no foundation for saying that the money would have been obtained in this case either in one of these ways or the other." Platt, B.: "It cannot be said that a party who presents a cheque for his own benefit is the agent of another who receives no benefit whatever."

If, however, the presentation by the London house had been in order to obtain the money for the prisoner, there can be no doubt that it would have been held that he had been guilty of an attempt to obtain the money, on the ground that the presentation by the London house was made by the innocent agents of the prisoner.

In all cases where an innocent agent does anything in furtherance of the design of a guilty person, the acts of the former are, in point of law, the acts of the latter. If, for instance, an offender send an innocent agent to make a false pretence, and he makes it, it is just the same as if the offender had made the false pretence himself: (*Reg. v. Butcher*, Bell C. C. 6.) In considering, therefore, what is an attempt where acts are done by an innocent agent, those acts must be looked at as if they were done by the offender himself. And it is to be observed that, where an act is done by an innocent agent, this act is to be considered as the act of all the guilty parties, though the innocent agent may have been employed by one of them in the absence of the rest, and consequently the rule as to principal and accessory is inapplicable to such a case: (*Reg. v. Bull*, 1 Cox Crim. Cas. 281.) Both in treason and misdemeanor all who are engaged in the crime are principals, the act of each in accordance with the common purpose being considered as the act of all. But in felony (except where the parties are in company at the time) the act of one is not considered as the act of the rest; in other words, the person who does an act in such a case "is not the agent of anyone:" (Per Alderson, B., *Reg. v. Bull*.) The last reported Crown case may well be mentioned here. A watch was stolen at Liverpool, and Rogers forwarded by railway from

Liverpool a box containing the watch to Byatt, and the box was delivered in due course to Byatt, in Middlesex; and it was held that the constructive possession of Rogers by the railway company in Middlesex was, for criminal as well as civil purposes, equivalent to actual possession by him, and that (as a thief is guilty of larceny in every county into which he asports the goods) Rogers was properly convicted of stealing the watch, at the Middlesex Sessions: (*Reg. v. Rogers*, 18 L. T. Rep. N. S. 414.)

Where a person supplied meat under a contract to a camp, and the course was to send meat to the quartermaster sergeants at the camp, who had their own weights and scales, with which the proper quantity of meat for each mess was weighed by the quartermaster sergeant and a servant of the contractor; and the prisoner, a servant of the contractor, and a quartermaster sergeant on one occasion weighed out the meat, the prisoner putting the weights into the scale, it was discovered that a false 14lb. weight had been substituted for the 14lb. weight of the quartermaster sergeant, which was concealed under a bench; and the false weight had been used in weighing thirty-four messes; by means of which they were 45lb. less in weight than they had appeared to be when first weighed, and the prisoner absconded before any of the surplus meat was removed, as it would have been after all the messes had been supplied; it was objected that there was no overt act so proximately connected with the felony intended to have been committed, as to warrant a conviction on a count which charged an attempt to steal; but it was held that there was, Erle, C.J., saying, "In my opinion there were several overt acts, which brought the attempt close to completion. There were the preparation of the false weight, the placing it in the scale, and the keeping back the surplus meat. It is almost the same as if the prisoner had been sent with two articles, and had delivered one of them as if it had been two. To complete the crime of larceny there only needed one thing, the beginning to move away with the property. The meat was in the prisoner's custody and under his control. He had almost the manual comprehension of it, and had all but begun the asportation:" (*Reg. v. Cheesman*, L. & C. 140.) It is to be observed that all the messes had been weighed before the examination took place; the meat, therefore, which had been

weighed had been separated from the rest, and the jury found that the prisoner intended to steal the difference between the just surplus of about 15lb.; for which he would have to account to his master, and the apparent surplus meat of about 60lb. actually remaining after the false weighing. And this is the true view of the case; for, though in every one of the thirty-four messes there was a false weighing, and consequently a delivery of too little meat, yet it is obvious that the intention was not to steal the false surplus of each weighing, but by means of all the false surpluses to cause the aggregate false surplus at the end of all the weighings, and then, perhaps, to steal that surplus. And as the prisoner caused each false weighing, he was guilty of thirty-four overt acts, every one of which contributed to cause the false surplus at the end of all the weighings. This view strengthens the judgment of the Court; but there is another point, which was overlooked. The prisoner did not intend to steal all the surplus 60lb., and until he had actually separated what he did intend to steal from what he intended to devote to his master's use, it was uncertain what particular meat he did intend to steal. At all events, as long as that separation had not been made, both the property and the possession of the whole remained in the master: (*Reg. v. Roberts*, 3 Cox C. C. 74; *Rex v. Butteris*, 6 C. & P. 147.) It was an error, therefore, to hold that "to complete the crime of larceny there only needed one thing, the beginning to move away with the property." Suppose the whole 60lb. weight had been all in one piece, it is clear the 45lb. must have been separated before the larceny of that part could have been committed; and the cases above cited show that there must have been a separation of the pieces intended to be stolen, even if the surplus 60lb. consisted of several pieces—in other words, the servant must have done some act whereby the master's possession was put an end to and a trespass committed. The decision, however, may perhaps be supported on the ground that what the prisoner did was the commencement and part of the very means by which the larceny might be effected; and in this case Blackburn, J., said: "There is a difference between the preparation antecedent to an offence and the actual attempt. But if the actual transaction was commenced, which would have ended in the crime, if not interrupted, there is clearly an attempt to commit the crime." The

doubt is, whether what the prisoner did was not rather the obtaining the means by which he might be enabled afterwards both to attempt and commit the larceny. If a man broke into a barn with intent to steal, would he be guilty of an attempt to steal the corn in it? No doubt the prisoner might have been convicted of doing the acts with a felonious intent, or of attempting to defraud by false pretences as to the weight, upon an indictment properly framed to meet either of those views of the case.

A number of cases may now be adverted to, in which it has been questioned whether in case there be an impossibility to commit a crime, a person can be guilty of an attempt to commit it, or of doing acts with intent to commit it. The first cases we shall mention are those where the question arose as to such attempts.

The prisoner was indicted for breaking into the house of M. F., and stealing therein *certain specified articles*. These things had been previously stolen from the house, but there were other things in the house, and the jury found that the prisoner attempted to steal the goods then in the house. But it was held that the prisoner could only be convicted, under the 14 & 15 Vict. c. 100, s. 9, of an attempt to commit the "felony charged" in the indictment, and not of an attempt to commit a felony different from that charged: (*Reg. v. M'Pherson*, D. & B. 197.) It was well said by Crowder, J., "When you charge an attempt to steal *certain articles in a dwelling-house*, you must prove that some *one of those articles was there*."

Where an indictment alleged that the prisoners did attempt to commit a certain felony, viz., that they put their hands into the gown pocket of a woman with intent *the property* of the said woman *in the said gown pocket then being* to steal, &c., but the woman was not examined, and no proof was given that there was any property in the woman's pocket; it was held that the prisoners had been wrongly convicted; but upon the special ground that the question "asked seemed to be whether an attempt at larceny can be committed by a person putting his hand into another person's pocket for the purpose of committing a larceny, there being at the time nothing in the pocket." And the Court were "of opinion that, assuming the fact to be that there was nothing in the pocket of the woman, the offence could

not have been committed" (per Cockburn, C.J.). But the Court thought that the question whether there was anything in the pocket might have been left to the jury, and Bramwell, B., seems to have thought that the prisoner furnished evidence against himself by putting his hand into the pocket: (*Reg. v. Collins*, L. & C. 471.) There can be no doubt that this and the preceding decision were right upon the grounds that the indictment in the former alleged the goods to be in the house, which was disproved, and in the latter to be in the pocket, which was not proved.

The following cases are those in which a similar question has arisen where the acts were alleged to have been done with *intent* to commit a crime. Some of these cases, however, would clearly amount to attempts to commit crimes; but they were not charged in the indictment. In *Rex v. Lyons* (2 East P. C. c. xv., s. 12, p. 497), the prisoners were indicted for burglary, with intent to steal, &c., and the Judges *held* that it was not a mansion-house, as it had never been inhabited; "they were also *of opinion* that it was not burglary upon this indictment; for there were no goods in the house; and the indictment charging the intent to steal must be to steal the goods then and there being, and where nothing was in the house nothing could be stolen." This report is taken by East from Cr. Cas. Res. MS. and MS. Gould and Buller, JJ. In the report of this case in 1 Leach, 185, it is stated that the prosecutor "had moved some of his effects, to the value of about 10*l.*, into the house." In consequence of this difference in these reports, I have searched the Old Bailey Sessions Papers, a copy of which is in Lincoln's-inn library, and in those for 1778, p. 83, No. 193, this case is given, and the prosecutor did state that "some effects to the value of 10*l.*," had been put in the house. The print ends by stating that "the judgment was respited," and there is the following MS. note: "And afterwards arrested upon the ground that a house, newly purchased and under repair, and not inhabited by the owner, who had never taken possession of it so as to live or sleep in it, or to have any other person belonging to him inhabiting or sleeping therein, was not a dwelling-house so as that burglary could be committed in it." This MS. note gives the ground of the decision so much fuller than either East or Leach that it cannot have been taken from them, and it may

be a note of the judgment delivered at the Old Bailey. It and the statement of the prosecutor quite support the report in Leach; but they scarcely suffice to negative East's report. The note states what East says was *held*, which was quite sufficient for the decision of the case. But it may well be that the Judges were also of the *opinion* stated by East, which may have arisen from the case submitted to them omitting any mention of the effects.

A youth under the age of fourteen cannot be guilty of rape on the ground of presumed impotency; and in *Rex v. Eldershaw* (3 C. & P. 396) Vaughan, B., held that such a youth could not be guilty of an assault with intent to commit a rape, saying "from his age the law concludes that it is impossible for him to complete the offence, and that, in my judgment, must be held to negative the intent" to commit a rape. And Patteson, J., in *Reg. v. Phillips* (8 C. & P. 736), held that such a boy "could not, in point of law, be guilty of the offence of an assault with intent to commit a rape." In both these cases the indictments alleged an assault with intent, and not an attempt, to commit a rape.

The 43 Geo. 3, c. 58, s. 1, made it a capital felony to administer any poison, &c., with intent thereby to cause "the miscarriage of any woman being then quick with child;" and sect. 2 made it felony with a lesser punishment to administer any poison, &c., with intent thereby to cause the miscarriage of "any woman not being, or not being proved to be, quick with child at the time." The prisoner was charged in one count with administering savin to S. C. "being with child," and in another with a similar administration, but without the words "being with child." It appeared that she never had been pregnant; and it was held that "the statute did not apply where it appeared negatively that the woman was not with child:" (*Rex v. Scudder*, R. & M. C. C. R. 216.) The 1 Vict. c. 85, s. 6, had only the words "with intent to procure the miscarriage of any woman," and all the words as to the woman being quick with child were omitted. But it appeared to me, when I edited Russell in 1843, that this omission had not altered the law as decided by *Rex v. Scudder*, as the 1 Vict. had done away with the distinction as to the punishment where the woman was quick with child and where she was not, which was quite sufficient to account for the omission in question. However, in *Reg. v. Goodall* (or *Good-*

child) (1 Den. C. C. 187; 2 C. & K. 293) the Judges held that on an indictment upon the 1 Vict. c. 85 for using an instrument with intent to procure the miscarriage of a woman, the fact of the woman not being pregnant was immaterial. This case, therefore, is a direct authority that a man may be convicted of an intent to do that which it was impossible to do. This case was not argued, and no previous authority was referred to in it, except *Rex v. Scudder*.

In the subsequent case of *Reg. v. Tylney* (1 Den. C. C. 319), one count charged a forgery with intent to defraud the heir-at-law of W. T., and another charged the forgery with intent to defraud certain persons whose names were unknown. Coltman, J., thought that, as there was no proof of there having been any heir-at-law of W. T., except one of the prisoners, the first count was not proved; but as the forgery was clearly proved, and it appeared highly improbable that such a forgery should be committed without an intent to defraud some one, the case was left to the jury on the other count, and they convicted; and the Judges were evenly divided on the question whether, in the absence of evidence of the existence of some person whom the prisoner could have defrauded by a forged will, a count for forgery with intent to defraud some person unknown could be supported. In *Reg. v. Nash* (2 Den. C. C. 493) the question was again discussed; but the case seems to have been decided on another ground. Maule, J., however, said: "The Recorder seems to have thought that, in order to prove an intent to defraud, there should have been some person defrauded, or who might possibly have been defrauded. But I do not think that at all necessary. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers', and a friend, with his knowledge, forges his name to a cheque either to try his credit, or to imitate his handwriting, there would be no intent to defraud, though there would be parties who might be defrauded; but where another person has no account at his bankers', but a man *supposes* that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded:" (p. 499.) Alderson, B., seems to have agreed with Maule, J. (p. 501), and Lord Campbell, C.J., Cresswell and Erle, JJ., did not express any dissent,

although Cresswell, J., had previously, in *Reg. v. Marcus* (2 C. & K. 358), held that "there must at all events be a possibility of some person being defrauded by the forgery."

With all deference I must be pardoned for doubting the latter part of the dictum of Maule, J. Where a cheque on a banker is forged, any one to whom the cheque is passed may be defrauded by it, although the banker has no funds, and this is the common case. It is difficult, too, to suppose any forgery, of which, *at the time of the forgery*, it can be correctly affirmed that no one can be defrauded by it. Every forged negotiable instrument may be passed to ignorant persons, and even non-negotiable instruments, *e. g.*, deeds or wills, may be used to raise money upon them from ignorant persons.

In *Reg. v. M'Pherson* (D. & B. 197) the prisoner was indicted for breaking into a house and stealing certain specified goods, which had, in fact, been taken out of the house previously, and it was held that he could not be convicted of the attempt to commit the "felony charged." But Cockburn, C.J., twice drew the distinction between *attempting* to commit an offence, and *intending* to commit it. And Coleridge, J., said, "When the prisoner broke into the house, he might have *intended* to steal the goods mentioned in the indictment; but you must not confound *attempt* with *intent*." And in *Reg. v. Collins* (L. & C. 471), where it was held that the prisoner could not be convicted, on an indictment charging an attempt to steal the property "then being" in a gown pocket, there being at the time nothing in the pocket, a like distinction seems to have been drawn.

Such are the authorities, as far as we are aware, which bear upon this question, and it would seem that the preponderance of them is in favour of the position that a man may be convicted of doing an act with *intent* to commit a crime, although it be impossible to commit such crime; but that a man cannot be convicted of an *attempt* to commit a crime unless the attempt might have succeeded.

It seems, however, to deserve further consideration whether the distinction apparently taken between an *attempt* and an *intent* to commit a crime in cases where the crime intended could not in fact be committed, can be supported. What is an *attempt*? Is it not an act or acts done with *intent* to commit a crime? The forms of indictment for attempts to commit crimes

in many cases do not allege an attempt at all, but allege the acts to have been done with *intent* to commit the crime, and many statutes make acts done with *intent* to commit crimes punishable, which are clearly attempts to commit those crimes. No doubt a distinction may be drawn between acts done with *intent* to commit crimes, and *attempts* to commit crimes, viz., every *attempt* to commit a crime includes an act done with intent to commit that crime; but an act may be done with such an *intent* which is not an attempt; in fact, attempts to commit crimes are only a part of acts done with intent to commit crimes. If, then, an intent to commit a crime may exist, though it is impossible to commit the crime, why may not an attempt to commit a crime also exist in like manner? We speak commonly of attempts to do things, which are either absolutely impossible, or impossible to those who make the attempt:

Hic situs est Phaeton, currûs auriga paterni,
Quem si non tenuit, magnis tamen excidit ausis.

Reg. v. M'Pherson and *Reg. v. Collins* do not decide the point; for in both those cases a material averment in the indictment was not proved, and it is but reasonable that any expressions of the learned Judges, which may be wider than were necessary for the decision in either of those cases, should be limited to the points really decided, viz., that the particular attempts were erroneously described. But suppose that the indictment had omitted the averment which was not proved, and the allegation of an attempt, and had simply averred that the prisoners did the acts with intent to steal the goods and chattels, neither describing them nor alleging where they were, such indictments would clearly have been good, and would not such indictments have alleged *attempts* to steal? and would not the evidence have proved them? If so, does not this prove that the supposed distinction between attempts and acts done with a criminal intent cannot be supported? Perhaps the strongest way to put the point is this: Suppose an indictment contained two counts, one charging an *attempt* to commit a crime and another charging acts done *with intent* to commit the same crime in such terms as clearly to amount to an attempt to commit the crime; and that it appeared that the prisoner did the acts with intent to commit the crime, but that it was impossible to commit it; then, according to the

authorities, he must be acquitted on the first count charging the attempt, and yet, according to the prevailing opinion, he might be convicted upon the second count, though, in point of law, it was precisely the same as the first count.

In *Reg. v. Collins*, Cockburn, C. J., said, "the prisoner had a double purpose, first, to ascertain whether there was anything in the pocket; secondly, to take it if there was;" and no doubt this is a perfectly correct view where a thief puts his hand in a pocket; but still he would be liable to be convicted of putting his hand into the pocket with intent to steal. It is just like the case where, on an indictment for shooting at a person with intent to do grievous bodily harm, the jury found that the prisoner's motive was to prevent his lawful apprehension, but that, in order to effect that purpose, he also intended to do grievous bodily harm; and the judges held that, if both intents existed, it was immaterial which was the principal and which the subordinate one: (*Rex v. Gillow*, R. & M. C. C. R. 85.)

I will now point out the proper mode of framing indictments in the cases to which this paper relates. Where the attempt to commit a felony is itself a felony, the indictment can, of course, only charge the attempt. If, therefore, there be any fair doubt whether the facts amount to an attempt, the proper course is to prefer a second indictment for a misdemeanor in doing the acts with a criminal intent. *Reg. v. Williams* (1 Den. C. C. 39 and Dears. C. C. 547) is a good precedent for that course. There the prisoner was acquitted on an indictment for attempting to administer poison by sending a guilty agent to administer it; but afterwards convicted on an indictment for the misdemeanor of doing those things unlawfully with the criminal intent.

But where the attempt to commit an offence is a misdemeanor, and there is any doubt as to the facts proving the attempt, the proper course is to add one or more counts alleging the acts to have been done with the criminal intent, and not to charge an attempt in those counts. By this course, if the proof of the attempt fail, the prisoner may still be convicted on the other counts.

As to the frame of the latter counts, they should always allege the acts to have been done "unlawfully," and should add such other adverbs as are appropriate to the particular case, whether they be "wilfully," "maliciously," "corruptly,"

"fraudulently," or other. The criminal intent should also be carefully stated in its proper legal terms. In many cases the intent to commit the intended offence may well be laid and proved. But there are cases in which doubts as to this may arise. Suppose, for instance, that although the prisoner may intend to commit the offence, and have done some act with that intent, yet it is impossible he could commit the offence, the question arises how is an indictment to be framed in such a case. It is obvious that care must be taken not to state any fact which cannot be proved. For instance, if the charge be one of putting the hand into a pocket, the intent must not be laid to steal the moneys "then being in the pocket," as that allegation would make it necessary to prove that there were moneys in the pocket: (*Reg. v. Collins.*) Several cases on the 5 Geo. 4, c. 83, s. 4, bear upon this point. That section applies to persons frequenting certain places "with intent to commit felony." In *In re Cross* (1 H. & N. 651; 1 C. B., N. S., 573) a commitment under this section ran "with intent feloniously to steal the moneys, goods, and chattels of S. S. from her person." In the other cases the statement was "with intent to commit felony:" (*In re Jones*, 7 Ex. R. 586; *Sewell v. Taylor*, 7 C. B., N. S., 160; *In re Davis*, 2 H. & N. 149; *Reg. v. Brown*, 17 Q. B. 833.) In none of these cases was any objection taken to the manner in which the intent was stated, except that the word "there" ought to have been added after "felony;" but both the Courts of Queen's Bench and Exchequer held that it was unnecessary, as the offence was committed if the intent were to commit felony anywhere: (*Reg. v. Brown*; *In re Jones.*) It would seem, however, that in some cases at least it would be right to add the word "there," or some equivalent, especially where it is clear that it was intended to commit the offence where the act was done. But there are cases where it ought not to be done; as where the act is the soliciting to murder or rob. *Reg. v. Johnson* (L. & C. 48) shows that the statement in *In re Cross* as to the goods was sufficient. There the prisoner was charged with attempting to steal "the goods and chattels of T. R. in the dwelling-house," &c., and it was held to be sufficient, for "where there is only an attempt, it is not always possible to say what property the would-be thief meant to steal;" and *à fortiori* that must be the case where there is only an intent; as in the case of

burglary, where it is unnecessary to describe the goods intended to be stolen or to state their ownership: (2 Russ. C. & M. 44.) The only correct rule is, that the intent, like other things, should be stated with as much particularity as the nature of the case will permit, and where there are several intents it is advisable to have counts framed so as to meet each of them.

The intent may be laid either in the prefatory part of the indictment, or in the conclusion, or in both. In *Rex v. Philips* (6 East R. 464) the indictment began by charging that the defendant, intending to do great bodily harm to R. G. T., and to break the peace, &c., sent a letter to R. G. T., in which he was said to have behaved like a blackguard, with intent to incite R. G. T. to challenge the defendant; and it was held that the intent was sufficiently alleged in the prefatory averment, and that the indictment might be supported either by the intent, or by the intent laid at the conclusion of it.

Indictments, which charged attempts to commit crimes, have been in two forms. In one the indictment has simply charged the attempt without alleging the means by which it was made. In the other the means have been stated, and then it has been alleged that the prisoner thereby attempted to commit the crime. It is clear that in the former case, if the evidence failed to prove an attempt, the prisoner must be acquitted. But in the latter case, if it be proved that the means were used with intent to commit the crime, but not so as to prove an attempt, the question arises whether the prisoner may not be convicted. The general rule is that "it is invariably enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified:" (Per Lord Ellenborough, *Rex v. Hunt*, 2 Campb. 585. See the cases 3 Russ. C. & M. 309, *et seq.*) If, therefore, it were proved that the prisoner did any of the acts alleged with a criminal intent, it would seem that he might be convicted thereof, provided the indictment properly stated the intent (*Reg. v. Reid*, 2 Den. C. C. 88), although the proof of the attempt failed. An attempt to commit a crime must include one or more acts done with intent to commit the crime, and on the general principle, a conviction may take place for the latter, if the proof fail to substantiate the former. In *Reg. v. Eagleton* the 8th, 9th, and 10th counts alleged that the prisoner made certain false pretences, but did not

allege any intent with which they were made, and then stated that the prisoner thereby attempted to obtain the money with intent to defraud. If the counts had alleged that the pretences were made with intent to defraud, all the difficulties in the case would have been avoided, and the prisoner might have been convicted of that part of the indictment. But as no intent was so laid, he could not be convicted if the making the pretences did not amount to an attempt: (*Reg. v. Reid.*)

I have now concluded this examination of indictable criminal acts and attempts to commit crimes, and I hope I have been able to throw considerable light upon these subjects, which have never been so fully considered before. At all events I feel sure that I have collected a mass of information which may prove serviceable on future occasions to those who may have to deal with any of these cases.

Since my paper on attempts to commit offences was written, my attention has been called to the following cases :

B., intended to murder C., wounds D. ; could he be indicted for attempting to murder D. ? Had he killed D., he would have been guilty of murder undoubtedly, but could he be guilty of attempting to do that which he did not design to do ? This statement is imperfect, as it does not mention whether C. was present at the time when D. was wounded. It is therefore necessary to deal with the question on the supposition that C. was present, and also on the supposition that he was absent.

1. If C. was present, the case would be that B., intended to murder C., struck at C., but missed him, and hit and wounded D. ; or, to put a similar case, B. shoots at C., with intent to murder him, but misses him, and hits and wounds D. It is quite clear that in both these cases B. was guilty of an attempt to murder C. He had the intent to murder, and he did an act which, if it had taken effect, as he intended it should, would have carried his intent into effect.

Then was B. guilty of an attempt to murder D. ? An attempt includes an intent to do the act intended ; and as in fact B. had no intent to murder D., it may, at first sight, reasonably be supposed that B. could not be guilty of an attempt to murder D. But when we come to examine the authorities we shall find that they lead to a different conclusion. In *Saunders' case* (Plow. 473), A. gave his wife a poisoned apple, intending to

murder her, and she innocently gave it to her child, who ate it and died; and this was held murder in A., on the ground that he had administered poison with intent to kill one person, and since death had ensued from^a his act, though to another person, yet it is murder in him, for he was the original causer of this death; and when he administered poison to the intent to kill any reasonable creature, and another reasonable creature, whom he did not intend, is killed by it, such killing shall not be dispunishable, but he who administered it shall be punished for it, because he had an evil intent. And for this reason it is for him to foresee what mischief will happen from his act prepared and ministered to an evil intent, and he shall not be excused by saying that he intended to kill another, and not this person. For if one, of malice prepense, shoot an arrow at one, intending to kill him, and his arrow kills another, against whom he bore no malice, this shall be murder in him; for he intended murder in his act, and because he directed his instrument of death, and had killed another with it, it shall be an equal offence in him as if he had killed the person intended. *For the end of the act shall be adjudged by the beginning of the act, and the last part shall savour of the first, and the first part was upon malice prepense, and so implied murder, and the end of the act, viz., the killing another, shall be of the same degree, viz., murder, and not homicide only.*

Upon the authority of this case, *Gore's case* (9 Rep. 81), was decided. There an apothecary made an electuary, by the directions of an M.D., for Gore, into which Gore's wife, Agnes, put poison, and gave some of it to Gore, who became grievously sick, and two others who ate part became sick also. The M.D., being told of these things, questioned the apothecary as to making the electuary according to his directions, and his answers satisfied the M.D.; but the apothecary, in order to remove all doubt, stirred the electuary together and ate part of it, of which he died. The doubt was, as the apothecary of his own head, and without the procurement of any, not only ate of the electuary, but stirred it together, which so incorporated the poison with it that it made the working more forcible than the mixture which Agnes had made, whether this distinguished the case from *Saunders' case*; and all the Judges held that Agnes was guilty of the murder of the apothecary, for "*the law doth join the murderous intent of Agnes in putting the poison into the electuary to*

kill her husband with the event which follows on it—i.e., the death of the apothecary; and the putting of the poison into the electuary is the occasion and cause, and the poisoning and death of the apothecary is the event; *quia eventus est qui ex causâ sequitur, et dicuntur eventus quia ex causis eveniunt*. And the stirring of the electuary by the apothecary, without the putting in of the poison by Agnes, could not have been the cause of the death." And the grounds of *Saunders' case* were altogether adopted by the court. Now, both these were cases of poisoning, in which the very essence of the offence is the intent with which the poison is laid or administered; and the ground of both decisions is that the murderous intent, with which poison is laid for or given to one person, shall be joined to the taking of the poison by another, for whom it was not intended; so that, in point of law, the case is exactly the same as if the intent had actually been to murder the person who took the poison. It follows from these authorities that where B. strikes at C. with a murderous intent, but misses him and kills D., the law couples the murderous intent against C. with the blow which kills D., and makes B. guilty of the murder of D. In other words, the law causes the blow which kills to be accompanied by the murderous intent. If that be so, and the authorities seem clearly to show that it is, the blow itself is of the same nature and character as if it had fallen on the person for whom it was in fact intended; in other words, it was a blow given with intent to murder. Upon these authorities it seems clear that, in the supposed case, B. might be guilty of an attempt to murder D., though he struck at C., and had in fact no murderous intent against D.

And this conclusion seems to be strongly confirmed by this consideration. Every crime, of necessity, must consist of an attempt to commit it, and of the execution of that attempt; and where, if death had ensued from an act done with a murderous intent, the crime would have been murder, it is exceedingly difficult to conceive that the act so done is not an attempt to murder.

No difficulty arises from two attempts to murder; viz., to murder C. as well as D., resulting from this reasoning. In *Gore's case* there was the attempt to murder Gore as well as the murder of the apothecary.

2. The other supposition is that C. was absent when D. was

wounded, and then the case would be that B., intending to murder C., wounded D., having mistaken him for C. On this supposition there is no doubt that B. would be guilty of an attempt to murder D. It is true that *Rex v. Holt* (7 C. & P. 518) is the other way; but after that decision in the edition of Russell in 1843, I remarked that "in the case of shooting at one person on the supposition that he is another, although there be a mistake, the prisoner must intend to murder that person at whom he shoots; it is true he may be mistaken in fact as to the person, and it may be owing to such mistake that he shoots at such person, but still he shoots with intent to kill that person. So in the case of cutting: a man may cut one person under a mistake that he is another person, but still he must intend to murder the person whose throat he cuts." And I cited *Reg. v. Mister* (Salop Spring Assizes 1841). There, Mister had followed one Ludlow for several days to an inn in Ludlow, and he got under a bed in which he supposed Ludlow would sleep; but into which one Mackreth got, and in the night Mister cut Mackreth's throat very severely, and there was no doubt he mistook him for Ludlow; and he was convicted before Gurney, B., on a count, which charged him with cutting Mackreth with intent to murder him, and afterwards executed. The following cases fully support the positions I so laid down. The prisoner having quarrelled with a man in a public-house, waited outside to attack him, but the prosecutor, with whom the prisoner had no dispute, went out first, and, being mistaken by the prisoner for the other man, was wounded by him. It was contended that the intent to injure the prosecutor was not proved, and *Rex v. Holt* was cited. Alderson, B.: "If *Rex v. Holt* lays down the position you contend for, I shall certainly overrule it. I do not think it either law or good sense. I shall direct the jury that if they think the prisoner did to the prosecutor what he intended to do to another man, they must find him guilty:" (*Reg. v. Lynch*, 1 Cox Crim. Cas. 361.) So where upon an indictment for wounding Taylor with intent to murder him, it appeared that the prisoner intended to murder one Maloney; but supposing Taylor to be Maloney, shot at and wounded Taylor, and the jury found that the prisoner intended to murder Maloney, not knowing that the party he shot at was Taylor, but supposing him to be Maloney, and that he intended

to murder the person he shot at, supposing him to be Maloney, and convicted the prisoner. The judges held, on a case reserved, that the conviction was right; for, though he did not intend to kill the particular person, he meant to murder the man at whom he shot: (*Reg. v. Smith*, Dears, C. C. 559.) This case clearly overrules *Rex v. Holt*, which was cited in it.

The result, therefore, clearly is, that if B. wounded D., supposing him to be C., whom he intenced to murder, B. would be guilty of an attempt to murder D., on the ground that he intended to murder D., though he mistook him for C.

In speaking of an attempt to murder, I have throughout dealt with it as a common law offence, and not as an offence within any statute.

I now advert to another case. B. persuaded a child under ten years of age to allow him to take indecent liberties with her, and he was indicted for an indecent assault; but that was answered by the fact of consent. It was then contended that he could be convicted of the attempt to commit an indecent assault; but Serjeant Cox held that if the full offence could not be sustained in law, he could not be convicted of an attempt to commit it. If the child was a consenting party, so that there was no assault, she must have consented also to the attempt. It also seemed to the learned Serjeant very difficult to understand how there could be an attempt to assault in any case; for whatever would amount to an attempt to assault would be an assault in law.

1. It is quite clear that the consent of the girl answered the charge of the indecent assault (*Reg. v. Martin*, 2 M. C. C. R. 123) for there can be in law no assault unless the act be done against consent.

2. It is equally clear that the consent of the girl would be an answer to an attempt to commit an assault, for the same reason also.

3. An assault is an attempt or offer, with force and violence, to do a corporal hurt to another, coupled with a present ability of using the force and violence upon the person of such other person. It is, therefore, confined to such acts as are accompanied by such a present ability. It is not easy to define precisely what a present ability is; but the following cases illustrate the matter. Where the plaintiff came to the defendant's premises, and refused

to leave them when ordered by him, and he collected together some of his workmen, who mustered round the plaintiff, tucking up their sleeves and aprons, and threatened to break his neck if he did not go out, and, fearing they would strike him if he did not do so, the plaintiff went out, the Court of Common Pleas held that this was an assault; for there was a threat of violence exhibiting a present intention to assault, and a present ability to carry the threat into execution: (*Read v. Coker*, 13 C. B. 850.) And where the plaintiff was walking along a footpath by the side of a road, and the defendant rode after him at a quick pace, and the plaintiff ran away and got into his own garden, when the defendant rode up to the garden-gate (the plaintiff being then about three yards from him), and shaking his whip, said, "Come out, and I will lick you before your own servants," Lord Tenterden, C.J., held, that if the defendant rode after the plaintiff, so as to compel him to run into his garden for shelter, to avoid being beaten, that is in law an assault: (*Mortin v. Shoppee*, 3 C. & P. 374.) So where the defendants were walking with loaded guns at half cock in their hands on the plaintiffs' field, and being desired to withdraw they half raised their guns, which they pointed towards the plaintiffs, and threatened to shoot them, Willes, J., held, that pointing a loaded gun is in law an assault. It is immaterial that it is at half cock; cocking is an instantaneous act, and there is a present ability of doing the act threatened, for it can be done in an instant: (*Osborne v. Veitch*, 1 F. & F. 317.)

We now advert to a case, which requires some consideration, as it is obviously inaccurately reported, as one part of it is quite inconsistent with the other part. According to the statement in the report, "the declaration stated that the defendant *threatened and attempted to assault* the plaintiff." The evidence was that at a parish meeting the defendant interrupted the proceedings, and the majority voted that he should be turned out of the room; whereon he said he would rather pull the chairman out of the chair, and advanced with his clenched fist towards the chairman, but was stopped by the churchwarden, who sat next but one to the chairman, at a time when he was not near enough for any blow he might have meditated to have reached the chairman, but when he seemed to be advancing with an intention to strike the chairman; Tindall, C.J., told the jury "it is not every threat,

when there is no actual personal violence, that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. The question I shall leave to you will be, whether the defendant was advancing at the time, in a threatening attitude, to strike the chairman, so that his blow would almost immediately have reached the chairman if he had not been stopped; then, though he was not near enough at the time to have struck him, yet, if he was advancing with that intent, I think it amounts to an assault in law. If he was so advancing that within a second or two of time he would have reached him, it seems to me that it is an assault in law:" (*Stephens v. Myers*, 4 C. & P. 349.) Now, the declaration, as stated, charged an *attempt to assault*, whereas the direction to the jury applies to an *assault* only. Clearly, therefore, one statement or the other must be erroneous. It is difficult to conceive how the statement as to the declaration can have got into the report, if it were in the ordinary form, and simply alleged that the defendant assaulted the plaintiff; and the facts would certainly be very likely to lead the pleader to frame a declaration in the form in which this is stated to have been; whilst, on the other hand, it is very easy to conceive that the statement of that great Judge, Tindal, C.J., may have been inaccurately reported, especially when so slight an alteration as substituting "attempt to assault" for "assault" in the latter part of his charge would make it consistent with the declaration as stated, and the facts also. If this view of this case be correct, it is a distinct authority that there may be an attempt to commit an assault.

In principle there seems no satisfactory ground for doubting that there may be such an attempt. Although an assault may be an attempt to inflict a battery on another, as where A. strikes at B., but misses him, yet it may not amount to such an attempt, as where A. holds up his hand in a threatening attitude at B. within reach of him, or points a gun at him without more. Is not the true view this—that every offence must have its beginning and completion? and is not whatever is done which falls short of the completion an attempt, provided it be sufficiently proximate to the intended offence? Pointing a loaded gun is an assault. Is not raising the gun in order to point it an attempt to assault?

So, too, there may be unlawful acts done in cases of assault which do not amount to an attempt. A. threatens to horsewhip B., and fetches a whip out of his house to do it, and in the meantime B. has gone away. Here there is an act done, and a criminal intent coupled with it.

And here let it be noted that Tindal, C.J., plainly thought that advancing towards a man with intent to assault him was a criminal act, and so did Lord Tenterden think that riding after a man was so also; and these high opinions mightily strengthen the doubt I expressed in my former paper as to the dictum that going to a place to commit a murder was not a criminal act.

It is presumed that the indictment in this case did not contain a similar statement to that in *Reg. v. Ryland* (18 L. T. Rep. 538), so as to warrant a conviction of an attempt to commit the statutory offence, although the evidence failed to prove the assault.

I subjoin a Table of Crimes and their Punishments, which may be useful for ready reference in court, and for which I am indebted to my friend Mr. Purcell, Barrister-at-Law.

A TABLE

OF

CRIMES AND THEIR PUNISHMENTS.

Contractions:—F, Felony; M, Misdemeanor; P. S., Penal Servitude; imp., imprisonment; h. l., hard labour; s. c., solitary confinement; w., whipping. N.B. In all cases the maximum term of penal servitude or imprisonment is given.

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| ABDUCTION : | | | | |
| of a woman of any age or under age on account of her property with intent to marry or defile. | F, P. S. 14 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 53. | | |
| fraudulent allurement or detention of any woman under twenty-one from parents or guardians with intent, &c. | F, Ibid. ... | Ibid. | | |
| forcible, of any woman of any age, with intent, &c. | F, Ibid. ... | Ibid. s. 54. | | |
| of a girl under sixteen out of possession of parents or guardians. | M, imp. 2 yrs h. l. | Ibid. s. 55. | | |
| ABETTERS : | | | | |
| in misdemeanors ... | M, same as principals. | 24 & 25 Vict. c. 94, s. 8, and see Ib. c. 96, s. 98; c. 97, s. 56; c. 98, s. 49; c. 99, s. 35; and c. 100, s. 67. | | |
| ABORTION : | | | | |
| administering drugs, or using instruments by woman herself or others. | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 58. | | |
| supplying drugs to same ... | M, P. S. 5 yrs, or imp. 2 yrs h. l. | Ibid. s. 59. | | |
| ACCESSORIES AND PRINCIPALS IN THE SECOND DEGREE : | | | | |
| accessories before the fact to any felony. | F, same as principal. | 24 & 25 Vict. c. 94, ss. 1, 2. | | |
| after the fact to any felony under the Larceny Act (except receiving). | F, imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 98. | | |
| after the fact under the Malicious Injuries to Property Act. | F, Ibid. ... | 24 & 25 Vict. c. 97, s. 56. | | |
| after the fact to any felony under the Offences against the Person Act (except murder). | F, imp. 2 yrs h. l. ... | 24 & 25 Vict. c. 100, s. 67. | | |
| after the fact to any other felony. | F, imp. 2 yrs h. l, and sureties for keeping the peace for not more than one year. | 24 & 25 Vict. c. 94, s. 4. | | |
| principals in second degree in cases of felony punishable under The Larceny Act. | F, same as principals in first degree. | 24 & 25 Vict. c. 96, s. 98. | | |
| The Forgery Act ... | F, Ibid. ... | — c. 97, s. 56. | | |
| Coinage Offences Act ... | F, Ibid. ... | — c. 99, s. 35. | | |
| Offences against the Person Act. | F, Ibid. ... | — c. 100, s. 67. | | |

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| <p>ACCUSING OF CRIME : (or threatening to accuse) with intent to extort.</p> <p>with intent to defraud, by unlawful violence or restraint, or by threats of accusing, of treason, felony or infamous crime, compelling to execute deed, &c.</p> <p>See also "Letter Threatening."</p> | <p>F, P. S. life, or imp. 2 yrs h. l, and male under 16 w.</p> <p>F, Ibid. (w. excepted) with s. c.</p> | <p>24 & 25 Vict. c. 96, s. 47.</p> <p>Ibid. s. 48.</p> |
| <p>ADMIRALTY : offences within jurisdiction of, see "Ship," <i>post</i>.</p> | | |
| <p>AGENT, see "Fraudulent Trustee," <i>post</i>.</p> | | |
| <p>ARMS : training to the use of, &c. ...</p> | <p>M, P. S. 7 yrs, or fine or imp. 2 yrs, or both.</p> | <p>60 Geo. 3 & 1 Geo. 4, c. 1, s. 1.</p> |
| <p>ARSON : places of divine worship ...</p> | <p>F, P. S. life, or imp. 2 yrs h. l, s. c, male under 16 w.</p> | <p>24 & 25 Vict. c. 97, s. 1.</p> |
| <p>dwelling house, any person being therein.</p> | <p>F, Ibid. ...</p> | <p>Ibid. s. 2.</p> |
| <p>house, outhouse, warehouse, farmbuilding, &c., whether the same be in the possession of the offender or any other person.</p> | <p>F, Ibid. ...</p> | <p>Ibid. s. 3.</p> |
| <p>buildings appertaining to railway, port, dock, harbour, canal, or other navigation.</p> | <p>F, Ibid. ...</p> | <p>Ibid. s. 4.</p> |
| <p>any other building belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or belonging to any university, college, or hall of any university, or to any inn of court, or devoted to public use or ornament, or erected or maintained by public subscription.</p> | <p>F, Ibid. ...</p> | <p>Ibid. s. 5.</p> |
| <p>any other building than those in the Act (24 & 25 Vict. c. 97) specified.</p> | <p>F, P. S. 14 yrs, or imp. 2 yrs h. l, and male under 16 w.</p> | <p>Ibid. s. 6.</p> |
| <p>anything being in or against or under any building, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony.</p> | <p>F, Ibid. ...</p> | <p>Ibid. s. 7.</p> |
| <p>attempting to set fire to any building or any matter or thing (as last offence) under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony.</p> | <p>F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w.</p> | <p>Ibid. s. 8.</p> |

ARSON (continued):

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| crops of hay, grass, corn, &c., standing or cut down, or wood, coppice, plantation, heath, gorse, furze, fern. | F, P. S. 14 yrs, or imp. 2 yrs h. l. s. c. male under 16 w. | 24 & 25 Vict. c. 97, s. 16. |
| stacks of corn, grain, pulse, hay, or any cultivated vegetable produce or furze, &c., peat, coals, wood, bark, &c. | F, P. S. life, or imp. 2 yrs h. l. s. c. and male under 16 w. | Ibid. s. 17. |
| attempting to set fire as in the two last offences, under such circumstances that if the same were thereby set fire to, the offender would be under either of these sections (16 and 17) guilty of felony. | F, P. S. 7 yrs, or imp. 2 yrs h. l. s. c. and male under 16 w. | Ibid. s. 18. |
| mines, setting fire to | F, P. S. life, or imp. 2 yrs h. l. s. c. and male under 16 w. | Ibid. s. 26. |
| attempting ditto... .. | F, P. S. 14 yrs, or imp. 2 yrs h. l. s. c. male under 16 w. | Ibid. s. 27. |
| ships, setting fire to | F, P. S. life, or imp. 2 yrs, h. l. s. c. male under 16 w. | Ibid. ss. 42, 43. |
| attempting ditto... .. | F, Ibid. | Ibid. s. 44. |
| setting fire to Her Majesty's vessels of war, &c. | F, death (sentence recorded 4 Geo. 4, c. 48, s. 1; 2 & 3 Vict. c. 56, s. 17.) | 12 Geo. 3, c. 24, s. 1. |
| setting fire to the works or vessels lying in dock. See "Malicious Injuries," "Accessories and Principals in the Second Degree." | F, Ibid. | Ibid. |
| ASSAULT: | | |
| common assault | M, imp. 1 yr h. l. ... | 24 & 25 Vict. c. 100, s. 47. |
| any assault causing bodily harm | M, P. S. 5 yrs, or imp. 2 yrs h. l. ... | Ibid. |
| impeding any person saving himself or others from a wreck. | F, P. S. 5 yrs, or imp. 2 yrs h. l. s. c. | Ibid. s. 17. |
| with intent to do grievous bodily harm, or to resist or prevent lawful apprehension or detainer. | F, Ibid. | Ibid. s. 18. |
| unlawfully wounding | M, Ibid. s. c. excepted. | Ibid. s. 20. |
| attempting to choke, strangle, &c., with intent to commit indictable offence. | F, P. S. life, or imp. 2 yrs h. l. and w. | Ibid. s. 21. |
| doing grievous bodily harm by gunpowder or other explosive substance. | F, P. S. life, or imp. 2 yrs h. l. s. c. and male under 16 w. | Ibid. s. 28. |
| causing explosive substance to explode, or sending such to any person, or laying such at any place, or throwing such, or any corrosive liquid with intent to maim or do grievous bodily harm, whether injury effected or not. | F, Ibid. | Ibid. s. 29. |

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| ASSAULT (continued): | | |
| throwing gunpowder or other explosive substance upon or near buildings, ships, &c., with intent to do bodily injury, whether injury effected or not. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, and male under 16 w. | 24 & 25 Vict. c. 100, s. 30. |
| with intent to commit felony... | M, imp. 2 yrs h. l, also fine and sureties. | Ibid. ss. 38, 71. |
| on males, with intent, &c. ... | M, P. S. 10 yrs, or imp. 2 yrs h. l. | Ibid. s. 62. |
| on persons discharging duty with regard to the preservation of wrecks. | M, P. S. 7 yrs, or imp. 2 yrs h. l, and court may fine in lieu or addition, and compel to find sureties. | Ibid. s. 37. |
| arising from a combination to raise wages. | M, imp., &c., as above. | Ibid. s. 41. |
| on ministers of religion engaged at their duties, or going or returning. | M, imp. 2 yrs h. l. | Ibid. s. 36. |
| with intent to rob, being armed with offensive weapons, or together with one or more persons, or the using personal violence at the time of robbery or just before or after. | F, P. S. life, or imp. 2 yrs h. l, s. c. (and if a male once, twice, or thrice w. 26 & 27 Vict. c. 44.) | 24 & 25 Vict. c. 96, ss. 43, 49. |
| with menaces or force demanding with intent to steal. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 45. |
| on peace officers and parish and union officers in discharge of duty. | M, imp. 2 yrs h. l, also fine and surety. | 24 & 25 Vict. c. 100, ss. 38, 71, and 13 & 14 Vict. c. 101, s. 9; and for definitions see 4 & 5 Will. 4, c. 76, and 14 & 15 Vict. c. 105, s. 18. |
| upon any person with intent to resist or prevent lawful apprehension of self or other person. | M, Ibid. | 24 & 25 Vict. c. 100, ss. 38, 71. |
| indecent upon any female ... | M, imp. 2 yrs h. l.... | Ibid. s. 52. |
| with intent to rob | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 42. |
| on keeper of deer while in execution of his powers, seizing gun, &c. | F, imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 16. |
| on special or county constable | M, imp. 2 yrs h. l, also fine and sureties. | 1 & 2 Will. 4, c. 41, s. 11, and 2 & 3 Vict. c. 93, s. 8. |
| by any person liable to be apprehended under the provisions of 14 & 15 Vict. c. 19, on person authorised to apprehend. | M, imp. h. l. 3 yrs... | 14 & 15 Vict. c. 19, s. 12. |
| ATTEMPTS TO MURDER: | | |
| by poison | P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 100, s. 11. |

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| ATTEMPTS TO MURDER (continued): | | | | |
| by explosions | F, P. S. life, or imp. 2 yrs h. l. s. c. | 24 & 25 Vict. c. 100, s. 12. | | |
| by setting fire to ships... .. | F, Ibid. | Ibid. s. 13. | | |
| by shooting, &c. | F, Ibid. | Ibid. s. 14. | | |
| by other means | F, Ibid. | Ibid. s. 15. | | |
| ATTEMPTS TO COMMIT OTHER CRIMES : | | | | |
| by administering chloroform or attempting to administer, with a view to commit or aid in the commission of an in- dictable offence. | F, P. S. life, 5 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 22. | | |
| to commit a felony whether statutable or at common law. | M, fine, imp, or both (and h. l. 3 Geo. 4, c. 114). | Common law. | | |
| to commit a misdemeanor. | M, fine or imp, or both. | Common law. | | |
| BAILEE, see "Larceny," <i>post</i> . | | | | |
| BANKERS, see "Fraudulent Trus- tees," <i>post</i> . | | | | |
| BANKING SHARES : | | | | |
| the inserting in any contract or agreement for the sale or transfer of shares in any banking company any false entry of the numbers, or any name other than that of the person in whose name the shares stand. | M, fine or imp, or both. | 30 Vict. c. 29, s. 1. | | |
| BANKRUPTCY : | | | | |
| persons made bankrupt in pur- sue of the act of 1869, where bankrupt does not truly discover all his prop- erty to trustee. | M, imp. 2 yrs h. l. | 32 & 33 Vict. c. 62, s. 11. | | |
| does not deliver up to trustee all such part of his real and personal property as is under his control. | M, Ibid. | Ibid. | | |
| does not deliver up all books, papers, &c., relating to his property after the presenta- tion of petition or com- mencement of liquidation, or within four months before, or concealing any part of his property, value £10 or up- wards, or any debt due to or from him. | M, Ibid. | Ibid. | | |
| if after, &c. (as above), bankrupt fraudulently removes any portion of his property, value 10l. or upwards. | M, Ibid. | Ibid. | | |
| makes any material omission in any statement relating to his affairs. | M, Ibid. | Ibid. | | |
| fails to inform trustee within a month where he knows or believes a false debt has been proved by any person under the bankruptcy or liquida- tion. | M, Ibid. | Ibid. | | |

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| BANKRUPTCY (<i>continued</i>): | | |
| if after the presentation of the bankruptcy petition or commencement of liquidation bankrupt prevents the production of any book or document. | M, imp. 2 yrs h. l. | 32 & 33 Vict. c. 62, s. 11. |
| if after, &c., or within four months next before, &c., he conceals, mutilates, &c., or is privy to concealment of any book or document relating to his affairs. | M, Ibid. ... | Ibid. |
| if, &c. (as before), he makes or is privy to the making any false entry in any book or document. | M, Ibid. ... | Ibid. |
| if, &c. (as before), he fraudulently parts with, or alters, or makes any omission in, or is privy to the parting with, altering, &c., any document. | M, Ibid. ... | Ibid. |
| if, after presentation of petition, or commencement of liquidation, or at any meeting of his creditors within four months next before such he attempts to account for any part of his property by fictitious losses or expenses. | M, Ibid. ... | Ibid. |
| if within four months next before the presentation, &c., or commencement, &c., he by any false representation, or other fraud, has obtained any property on credit and has not paid for same. | M, Ibid. ... | Ibid. |
| if, as above, he, being a trader, obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade any property on credit, and has not paid for same. | M, Ibid. ... | Ibid. |
| if, as above, he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for. | M, Ibid. ... | Ibid. |
| if he is guilty of any false representation, or other fraud, for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his bankruptcy, or liquidation. | M, Ibid. ... | Ibid. |
| not surrendering upon the day limited, and signing and subscribing surrender, and submitting to be examined. | M, imp. 3 yrs, at the discretion of the court. | 24 & 25 Vict. c. 134, s. 221. |

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| BANKRUPTCY (continued): bankrupt or his wife, or any other person, giving false evidence. | M, same as perjury. | 12 & 13 Vict. c. 106, s. 254 (and see "Perjury," post). |
| wilfully and corruptly swearing or affirming falsely before a registrar. | M, Ibid. | 24 & 25 Vict. c. 134, s. 54. |
| wilfully and corruptly making any declaration for proof of debt knowing the same or the statement of account appended to be untrue in any material particular. | M, Ibid. | Ibid. s. 145. |
| forging signature of commissioner or officer or seal of court. | F, P. S. 7 yrs, or imp. 3 yrs h. l. | Ibid. s. 205, and see 8 & 9 Vict. c. 113, s. 4; 20 & 21 Vict. c. 3, s. 2. |
| inserting without authority, or knowing same to be false, any advertisement in <i>London Gazette</i> , or other newspaper pretending to be under the acts. | M, fine or imp, or both. | 12 & 13 Vict. c. 106, s. 272. |
| BIGAMY | F, P. S. 7 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 57. |
| BRIBERY , see "Elections." | | |
| BURGLARY: entering the dwelling-house of another at night with intent to commit felony therein, or being in such committing a felony, and in either case breaking out. | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 52. |
| entering dwelling-house at night with intent to commit felony. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 54. |
| CATTLE , see "Larceny," and "Malicious Injuries," post. | | |
| CHAIN CABLE OR ANCHOR: stamping, or assisting in stamping of, with mark of tester without authority, with intent, &c. | M, imp. 2 yrs h. l, s. c. | 27 & 28 Vict. c. 27, s. 12. |
| CHALLENGE: sending of, &c. | M, fine or imp, or both. | Common law. |
| CHILDREN: taking away or decoying when under fourteen years of age, or with intent to steal clothes of, or receiving knowingly decoyed child. | F, P. S. 7 yrs, or imp. 2 yrs h. l, and male under 16 w. | 24 & 25 Vict. c. 100, s. 56. |
| procuring defilement of girl under 21. | M, imp. 2 yrs h. l, and fine in addition or in lieu, and sureties for good behaviour. | Ibid. ss. 69, 71. |
| carnal knowledge ["Rape." of, see | | |

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| CHILDREN (<i>continued</i>): | | |
| indecent assault upon, or attempt to have carnal knowledge of, where under 12. | M, imp. 2 yrs ... | 24 & 25 Vict. c. 100, s. 56. |
| abandonment or exposure of, under age of 2 years; and see "Concealing Birth," <i>post</i> . | M, P. S. 5 yrs, or imp. 2 yrs h. l. | Ibid. s. 27. |
| CLERGYMAN : | | |
| preventing from officiating or obstructing, or assaulting or arresting while engaged in, or about to engage in, his clerical rites or duties. | M, imp. 2 yrs, and fine in addition or in lieu, and sureties. | 24 & 25 Vict. c. 100, s. 36. |
| COIN : | | |
| falsely making or counterfeiting any coin resembling, or intending to resemble, or pass for any current gold or silver coin. | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 99, s. 2. |
| colouring of, or of pieces of metal to pass for gold or silver coin, or colouring or altering genuine silver or copper coin to make it pass for a higher coin. | F, Ibid. ... | Ibid. s. 3. |
| impairing gold or silver coin with intent to pass same. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 4. |
| unlawful possession of filings or clippings of gold, or silver coin. | F, P. S. 7 yrs, imp. 2 yrs h. l, s. c. | Ibid. s. 5. |
| buying or selling counterfeit coin. | F, P. S. life, imp. 2 yrs h. l, s. c. | Ibid. s. 6. |
| importing counterfeit coin ... | F, Ibid. ... | Ibid. s. 7. |
| exporting ditto ... | M, imp. 2 yrs, h. l, s. c. | Ibid. s. 8. |
| uttering ditto ... | M, imp. 1 yr h. l, s. c. | Ibid. s. 9. |
| uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering. | M, imp. 2 yrs, h. l, s. c. | Ibid. s. 10. |
| having three or more pieces of counterfeit gold or silver coin in possession, with intent, &c. | M, P. S. 5 yrs, imp. 2 yrs h. l, s. c. | Ibid. s. 11. |
| every second offence of uttering, &c. | F, P. S. life, imp. 2 yrs h. l, s. c. | Ibid. s. 12. |
| uttering foreign coin, medals, as current coin, &c., with intent to defraud. | M, imp. 1 yr h. l, s. c. | Ibid. s. 13. |
| counterfeiting copper coin, &c. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 14. |
| uttering base copper coin, and having in possession, with intent to utter three pieces of such. | M, imp. 1 yr h. l, s. c. | Ibid. s. 15. |
| defacing by stamping names or words thereon. | M, imp. 1 yr h. l. | Ibid. s. 16. |
| counterfeiting foreign gold or silver coin. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 18. |
| bringing such into the kingdom | F, P. S. 7 yrs, imp. 2 yrs h. l, s. c. | Ibid. s. 19. |
| uttering such ... | M, imp. 6 mths h. l. | Ibid. s. 20. |
| second offence ... | M, imp. 2 yrs h. l, s. c. | Ibid. s. 21. |

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| COIN (continued): | | |
| third offence | F, P. S. life, imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 99, s. 21. |
| counterfeiting foreign coin other than gold or silver. | F, P. S. 7 yrs, imp. 2 yrs h. l, s. c. | Ibid. s. 22. |
| making, mending, or possessing coining tools. | F, P. S. life, imp. 2 yrs h. l, s. c. | Ibid. s. 24. |
| conveying tools or moneys out of the mint without au- thority. | F, Ibid. | Ibid. s. 25. |
| accessories in case of every felony punishable under 24 & 25 Vict. c. 99. | F, same as princi- pal in first. | Ibid. s. 35. |
| accessories after the fact ... | M, imp. 2 yrs h. l.... | Ibid. |
| CONCEALING BIRTH OF CHILD: | M, imp. 2 yrs h. l.... | 24 & 25 Vict. c. 100, s. 60. |
| CONSPIRACY: | | |
| to charge another with crime, to defraud or injure others, to commit any offence, to prevent the course of justice, to effect legal purposes by improper means, of journey- men to raise wages. | M, fine or imp. or both (h. l. 14 & 15 Vict. c. 100, s. 29). | Common law. |
| COPYRIGHT IN BOOKS: | | |
| making false entry in the Reg- ister Book of the Stationers Company, or producing, or causing to be tendered, in evidence, any paper falsely purporting to be a copy of such entry. | M, fine or imp. or both. | 5 & 6 Vict. c. 45, s. 12. |
| CRUELTY (and see "Children" post.) | M, fine or imp. or both. | Common law. |
| DANGEROUS GOODS: | | |
| delivery of, sending of, deposit- ing of, &c. | M, penalty not ex- ceeding 500l., or imp. 2 yrs h. l, and forfeiture of the goods. | 29 & 30 Vict. c. 69, ss. 3-5. |
| DISOBEDIENCE: | | |
| of justices' order, or of direc- tion or prohibition of statute to which no penalty is an- nexed. | M, fine or imp. or both. | Common law. |
| DRIVERS OF CARRIAGES: | | |
| doing bodily harm by wilful misconduct, or wilful neglect, | M, imp. 2 yrs h. l. ... | 24 & 25 Vict. c. 100, s. 35. |
| ELECTION: | | |
| making false answer to ques- tions of returning officer. | M, fine or imp. or both. | 6 & 7 Vict. c. 18, s. 81. |
| personation | M, Ibid. | Ibid. ss. 83, 89. |
| falsely, or fraudulently signing voter's declaration of place of abode. | M, fine or imp. not exceeding 1 yr, and declaration may be impounded. | 28 Vict. c. 36, s. 11. |
| bribery, undue influence, mak- ing payments not through authorised agents. | M, fine or imp. or both. | 17 & 18 Vict. c. 102, ss. 2, 3, 5. |

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| ELECTION (<i>continued</i>): agent or candidate, furnishing untrue statement of expenses falsely signing, &c. voting paper (universities.) | M, fine or imp. or both. M, fine or imp. not exceeding 1 yr. | 17 & 18 Vict. c. 102, s. 4. 24 & 25 Vict. c. 53, s. 5. |
| EMBEZZLEMENT : by an officer of the Bank of England. | F. P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 68. Ibid. s. 73. |
| ENTRY (FORCIBLE): into a freehold or leasehold ... | M, imp. and ransom at Sovereign's will, restitution of property, or fine or imp. or both. | 5 Ric. 2, c. 8; 15 Ric. 2, c. 2; 31 Eliz. c. 11; 21 Jac. 1, c. 15; 8 Hen. 6. c. 9; Common law. |
| ESCAPE AND RESCUE : escaping from penal servitude before time. | F, P. S. life, and previous imp. not exceeding 4 yrs h. l. or P. S. life. F, imp. 2 yrs h. l. ... | 5 Geo. 4, c. 84, s. 22; 4 & 5 Will. 4, c. 67. |
| rescue of a convict from gaoler, &c. of a murderer or his body after execution. | F, P. S. life, or imp. 3 yrs h. l. (in case of body, P. S. 7 yrs.) F, or M.* F, the same as the person escaping was sentenced to; M, fine and imp. h. l. | Ibid. and 56 Geo. 3, c. 27, ss. 7, 13. 25 Geo. 2, c. 37, ss. 9, 10. |
| officer having person in charge for felony, voluntarily permitting his escape. | F, or M.* F, the same as the person escaping was sentenced to; M, fine and imp. h. l. | Common law. |
| breaking prison when in custody for capital offence. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c, and w. | 1 Edw. 2, st. 2, c. 1; 7 & 8 Geo. 4, c. 28, ss. 8, 9. |
| when in custody on a minor charge. | M, fine and imp. h. l. | Common law. |
| rescuing person convicted of felony. | F, P. S. 7 yrs, or imp. 3 yrs, and not less than 1 yr. M, fine and imp. | 1 & 2 Geo. 4, c. 88, s. 1. |
| charged with ditto, or convicted of misdemeanor. | M, fine and imp. | Common law. |
| aiding to escape, or conveying into prison any article to facilitate such. | F, imp. 2 yrs h. l. ... | 28 & 29 Vict. c. 126, s. 37. |
| rescuing a prisoner charged with treason, if subsequently convicted. | F, punishment as traitor, or P. S. 7 yrs, or imp. 4 yrs. | Common law, and 1 & 2 Geo. 4, c. 88. |
| aiding the escape of a prisoner, in custody for treason or felony, while being conveyed to prison, or in prison. | F, P. S. 7 yrs. ... | 16 Geo. 2, c. 31, ss. 1, 3. |
| in custody for petty larceny, or for debt of 100l., do. | M, fine and imp. ... | Ibid. |
| aiding prisoners of war to escape. | F, P. S. life ... | 52 Geo. 3, c. 156, s. 1. |

* This is felony if prisoner escapes after conviction; misdemeanor, if before. The officer cannot be convicted of felony till after the conviction of the delinquent, but can be punished for a misdemeanor.

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| EXCISE : armed persons, rescuing of- fenders, assaulting officers, informers, &c. | F, P. S. 7 yrs. ... | 23 & 24 Vict. c. 114, s. 200. |
| FALSE PRETENCES : by, obtaining any money, chat- tel, &c. | M, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 88. |
| by, procuring any money to be paid, or chattel, or valuable security to be delivered to any person. | M, Ibid. ... | Ibid. s. 89. |
| fraudulently causing any per- son, by false pretences, to execute, &c., the whole or part of any valuable security, or to write, or impress, or affix his name, or that of any company or partnership, or the seal of any body corpo- rate, upon any paper or parchment, in order that the same may be afterwards made, or converted into, or dealt with as a valuable security. | M, Ibid. ... | Ibid. s. 90. |
| attempting to obtain property, as above. | M, fine and imp. ... | Common law. |
| FALSE SCALES AND WEIGHTS : selling by ... | Fine or imp. or both (and h. l; 14 & 15 Vict. c. 100, s. 29.) | Ibid. |
| FISH : taking, or destroying in water running through land adjoining the dwelling-house of a person owning such water, or having a right of fishing. | M, fine or imp. or both, and sureties. | 24 & 25 Vict. c. 96, s. 24. |
| FORGERY : forging the Great Seal, Privy Seal, &c. | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 98, s. 1. |
| East India bonds ... | F, Ibid. ... | Ibid. s. 7. |
| Exchequer bills, bonds, and debentures. | F, Ibid. ... | Ibid. s. 8. |
| bank notes... .. | F, Ibid. ... | Ibid. s. 12. |
| wills... .. | F, Ibid. ... | Ibid. s. 21. |
| bills of exchange, and promis- sory notes. | F, Ibid. ... | Ibid. s. 22. |
| debentures... .. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 26. |
| proceedings of Courts of Record or Courts of Equity. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 27. |
| transfer of Stock of Bank of England, or of Incorporated Societies, &c., or power of attorney relating thereto, or demanding to act by virtue of forged power of attorney. | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 2. |
| deeds, bonds, &c. ... | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 20. |
| orders, receipts, &c. for money, goods, &c. | F, Ibid. ... | Ibid. s. 23. |
| court rolls ... | F, Ibid. ... | Ibid. s. 30. |

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| FORGERY (<i>continued</i>): | | |
| orders of justices, recognisances, affidavits, &c. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 98, s. 32. |
| forging name of Accountant-General of Court of Chancery in England or Ireland, or of judge of Landed Estates Court, Ireland. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 33. |
| copies or certificates of records, proceeds of courts not of record, and using forged process instruments made evidence by acts of Parliament. | F, P. S. 7 yrs, or imp. 2 yrs h. l, + s. c. | Ibid. s. 28. |
| making false entries of stock in public funds, &c. | F, Ibid. | Ibid. s. 29. |
| demanding property upon forged instruments. | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 5. |
| making, or accepting bill, or note, &c. by procuration, without lawful authority, or uttering such with intent to defraud. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 38. |
| obliterating crossing on cheques | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 24. |
| personating owner of stock, or endeavouring to transfer, or receive the dividends from stock in such. | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 25. |
| forging attestation to, power of attorney for transfer of stock, &c. | F, Ibid. | Ibid. s. 3. |
| making out false dividend warrants, by clerks of Banks of England or Ireland. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 4. |
| falsely acknowledging recognisances. | F, Ibid. | Ibid. s. 6. |
| making plates, &c., in imitation of those used for Exchequer bills. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 34. |
| making paper, in imitation of that used for Exchequer bills. | F, Ibid. | Ibid. s. 9. |
| having in possession paper, plates, or dies, to be used for Exchequer bills, &c. | F, Ibid. | Ibid. s. 10. |
| purchasing, or receiving, or having forged, bank notes or bills. | M, imp. 3 yrs h. l. (or fine and sureties, s. 51.) | Ibid. s. 11. |
| national debt, register, transfer, &c., or personating nominees under act enabling the commissioners to grant annuities. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 13. |
| certificates relating to quarantine. | F, P. S. life, or imp. 4 yrs, h. l, s. c. | 2 & 3 Will. 4, c. 59, s. 19. |
| dies, &c., for stamping gold or silver wares. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | 6 Geo. 4, c. 78, s. 25. |
| stamps on parchment, &c. ... | F, P. S. 14 yrs, or imp. 3 yrs, h. l. | 7 & 8 Vict. c. 22, s. 2. |
| making or having mould for making paper with the words Bank of England, or with curved bar lines, &c. | F, P. S. life, or imp. 4 yrs. | 3 & 4 Will. 4, c. 97, s. 12. |
| | F, Ibid. | Ibid. s. 14. |

FORGERY (continued):

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| engraving, or having any plate, &c. for making notes of Bank of England, or other banks, or uttering or having paper upon which a blank note, &c., is printed. | F, P. S. life, or imp. 4 yrs. | 3 & 4 Will. 4, c. 97, s. 16. |
| engraving on a plate, &c., any number, word, device, &c., resembling part of a bank note, or bill, or of note, &c., of other bankers, or using, or having any such plate, &c., or uttering, or having paper on which any such words, &c. is impressed. | F, P. S. life, or imp. 2 yrs. h. l, s. c. | Ibid. s. 17. |
| making, or having mould for making paper with the name of any banker, or making, or having such paper. | F, Ibid. | Ibid. s. 18. |
| engraving plate for foreign bills or notes, or using, or having such plates, or uttering paper on which any part of such bill, or note is printed. | F, Ibid. | Ibid. s. 19. |
| registers of deeds | F, P. S. 14 yrs, or imp. 2 yrs. h. l, s. c. | Ibid. s. 31. |
| marriage licenses... .. | F, P. S. 7 yrs, or imp. 2 yrs, h. l, s. c. | Ibid. s. 35. |
| accessories after the fact in felonies under this act. | F, imp. 2 yrs. h. l, s. c. | Ibid. s. 49. |
| aiders in misdemeanor ditto ... | Same as principal. | Ibid. |
| official documents, decrees, orders, private acts, &c. | F, P. S. 7 yrs, or imp. 3 yrs, h. l. | 8 & 9 Vict. c. 113, s. 4; 7 & 8 Geo. 4, c. 28, s. 4; 11 & 12 Vict. c. 78, s. 6. |
| seals, signatures, &c., under Probate Court Act. | F, P. S. life, and not less than 7 yrs, or imp. 3 yrs, and not less than 1 yr. | 21 & 22 Vict. c. 95, s. 33. |
| ditto Divorce Court | F, Ibid. | 21 & 22 Vict. c. 108, s. 22. |
| forging or uttering instruments not provided for by statute. | M, fine or imp, or both. | Common law. |

FRAUDULENT TRUSTEES:

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| banker, merchant, broker, attorney, or other agent entrusted with money or security with direction in writing to apply same for any specified purpose, converting to his own use, or entrusted with any chattel or valuable security or power of attorney for sale or transfer of interest in public or other funds, for safe custody or special purpose without authority to sell, selling, converting, &c., such. | M, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 75. |
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| FRAUDULENT TRUSTEES (<i>continued</i>): | | |
| bankers, merchants, &c. fraudulently converting property entrusted to them. | M. P. S. 7 yrs, or imp. 2 yrs, h. l, s. c. | 24 & 25 Vict. c. 96, s. 76. |
| persons under powers, ditto ... | M, Ibid. ... | Ibid. s. 77. |
| trustees, ditto ... | M, Ibid. ... | Ibid. s. 80. |
| directors, &c. of public companies or bodies corporate, appropriating the property of the company. | M, Ibid. .. | Ibid. s. 81. |
| ditto, keeping fraudulent accounts. | M, Ibid. ... | Ibid. s. 82. |
| ditto, destroying books, &c. ... | M, Ibid. ... | Ibid. s. 83. |
| ditto, publishing fraudulent statements. | M, Ibid. ... | Ibid. s. 84. |
| FRIENDLY SOCIETIES: circulating false copies of rules, or alterations of rules. | M, fine or imp. or both. | 18 & 19 Vict. c. 63, s. 29. |
| GAME: | | |
| taking game or rabbits by night, or using net for taking same on land or the high road, after two previous summary convictions. | M, P. S. 7 yrs, or imp. 2 yrs h. l. | 20 & 21 Vict. c. 3, s. 1-2. |
| offenders committing the above offence, and assaulting keeper with gun. | M, Ibid. ... | Ibid. s. 2. |
| three or more persons together by night, entering or being upon land with offensive weapons, to take game or rabbits. | M. fine or imp, or both, | Ibid. s. 9. |
| taking, or killing at night, hares or rabbits in any warren, enclosed or not. | M, P. S. 14 yrs, or imp. 3 yrs h. l. | 24 & 25 Vict. c. 96, s. 17. |
| GUNPOWDER , see "Malicious Injuries." | | |
| HOUSEBREAKING: | | |
| breaking into and committing a felony within the curtilage of a building, and occupied therewith, but not part thereof, or being in such a building and committing felony, and breaking out. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, | 24 & 25 Vict. c. 96, s. 55. |
| breaking and entering, and committing felony, or having committed felony, breaking out of any dwelling-house, school-house, shop, warehouse, or counting-house. | F, Ibid. ... | Ibid. s. 56. |
| breaking and entering any dwelling-house, place of divine worship or building, within the curtilage, school-house, shop, ware or counting house, with intent to commit a felony, | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 57. |

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| HOUSEBREAKING (<i>continued</i>): being found by night, armed with weapon or instrument with intent to break, or enter into any dwelling-house, or other building, with intent to commit felony, or having in possession, without lawful excuse, any picklock, key, crow, jack, bit, or other implement of housebreaking, or being found at night with face blackened, or disguised with intent, &c., or being found in any dwelling-house or building by night, with intent, &c. anyone convicted of any of the above misdemeanors (s. 58), after a previous conviction for either felony or such misdemeanor. | M, P. S. 5 yrs, or imp. 2 yrs h. l, and sureties for the peace. M, P. S. 10 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 96, s. 58. Ibid. s. 59. |
| INDECENT ASSAULT , see "Assault" | | |
| INDECENT EXPOSURE : of the person, or the printing, publishing, or exposing to view, obscene writings or prints. | M, fine or imp. or both, h. l. | Common law. |
| LARCENY : | | |
| simple | F, P. S. 5 yrs, imp. 2 yrs h. l, s. c, and male under 16 w. | 24 & 25 Vict. c. 96, s. 4. |
| as bailee after previous conviction for felony. | F, Ibid. F, P. S. 10 yrs, and not less than 7, and imp. and whipping as above. | Ibid. s. 3. Ibid. s. 7. |
| after conviction of indictable misdemeanor. | F, P. S. 7 yrs, imp. and whipping as above. | Ibid. s. 8. |
| after two summary convictions under 7 & 8 Geo. 4, cc. 29, 30, or 10 & 11 Vict. c. 82, or 24 & 25 Vict. cc. 96, 97. | F, Ibid. | Ibid. s. 9. |
| cattle | F, P. S. 14 yrs, imp. as above. | Ibid. s. 10. |
| killing cattle with intent to steal. | F, same punishment as for stealing, provided the stealing would have amounted to a felony. | Ibid. s. 11. |
| killing deer in uninclosed forest, second offence. | F, imp. as above, whipping as above. | Ibid. s. 12. |
| killing, hunting, or carrying away, or attempting to kill deer in inclosed ground. | F, Ibid. | Ibid. s. 13. |
| stealing dog, after previous summary conviction. | M, imp. 18 mths h. l. | Ibid. s. 18. |
| possession of stolen dog, after previous summary conviction | M, Ibid. | Ibid. s. 19. |
| corruptly taking money for aiding to recover any dog. | M, imp. 18 mths h. l. | Ibid. s. 20. |

LARCENY (continued) :

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| stealing oysters from fishery... | F, as simple larceny. | 24 & 25 Vict. c. 96, s. 26. |
| rising dredge or other instrument within the limits of an oyster bed for the purpose of taking oysters, though none be actually taken, or dragging upon the ground of such fishery. | M, imp. 3 mths h. l, s. c. | Ibid. |
| stealing bonds, bills, notes, or for fraudulent purpose destroying, cancelling, obliterating the whole, or any part of any valuable security, other than a document of title to lands. | F, same as simple larceny. | Ibid. s. 27. |
| ditto (destroying or concealing) of whole or part of any document of title to lands. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 28. |
| ditto of wills | F, P. S. life, or imp. 2 yrs h. l, s. c. | Ibid. s. 29. |
| ditto of records or other original document of Court of Record, or document relating to Government offices. | F, Ibid. | Ibid. s. 30. |
| metal, &c., fixed to buildings... | F, as simple larceny. | Ibid. s. 31. |
| trees, shrubs, &c., stealing, or damaging with intent to steal, in any park, pleasure ground, garden, orchard, avenue, or ground belonging to a dwelling-house, in case the value exceeds 1l. | F, Ibid. | Ibid. s. 32. |
| stealing, &c., when growing anywhere else than described above, in case the value exceeds 5l. | F, Ibid. | Ibid. |
| wheresoever growing, to value of 1s., after two previous summary convictions. | F, Ibid. | Ibid. s. 33. |
| the like offences in respect to plants, fruits, &c. in gardens, after one previous summary conviction. | F, Ibid. | Ibid. s. 36. |
| from mines | F, imp. 2 yrs h. l, s. c. | Ibid. s. 38. |
| from mines, by those employed therein. | F, Ibid. | Ibid. s. 39. |
| robbery and larceny from the person. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 40. |
| by menaces or threats, demanding property with intent to steal. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 45. |
| in houses, to the value of 5l. or more. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 60. |
| and putting anyone therein in bodily fear by menaces or threats. | F, Ibid. | Ibid. s. 61. |
| in manufactories, goods, or materials to the value of 10s. or more. | F, Ibid. | Ibid. s. 62. |
| in ships and wharfs | F, Ibid. | Ibid. s. 63. |
| goods belonging to any ship in distress, or part of such ship | F, Ibid. | Ibid. s. 64. |

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| LARCENY (<i>continued</i>): | | | | | |
| by clerks or servants | ... | ... | ... | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | 24 & 25 Vict. c. 96, s. 67. |
| by tenants or lodgers, of chat- tels or fixtures let to the offender, where value not exceeding 5 <i>l</i> . | | | | F, imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 74. |
| the like, where value exceeds 5 <i>l</i> . | | | | F, P. S. 7 yrs, imp. &c. as above. | Ibid. |
| LETTER (THREATENING): | | | | | |
| to kill | ... | ... | ... | F, P. S. 10 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | 24 & 25 Vict. c. 100, s. 16. |
| to burn | ... | ... | ... | F, Ibid. | 24 & 25 Vict. c. 97, s. 50. |
| demanding money | ... | ... | ... | F, P. S. life, imp. &c. as above. | 24 & 25 Vict. c. 96, s. 44. |
| threatening to accuse of crime punishable by death or penal servitude not less than seven years, or of assault with in- tent to commit rape, or of any attempt or endeavour to commit rape, or of any infamous crime (buggery with man or beast, assault to commit such, or attempt or solicitation to move any person to permit it) with intent to extort. See "Accusing of Crime" (threats not by letter). | | | | F, Ibid. | Ibid. s. 46. |
| LIBEL : | | | | | |
| publishing or threatening to publish any libel upon any person, or threatening to permit and publish, or pro- posing to abstain or prevent the publishing of any matter or thing touching any other person with a view to extort money, &c. | | | | M, imp. 3 yrs h. l.... | 6 & 7 Vict. c. 96, s. 3. |
| false defamatory libel | ... | ... | ... | M, imp. 2 yrs, and such fine as the court may award. | Ibid. s. 4. |
| malicious ditto | ... | ... | ... | M, imp. 1 yr, or fine or both. | Ibid. s. 5. |
| blasphemous ditto | ... | ... | ... | Fine and imp. | Common law. |
| against the person and govern- ment of the Sovereign, or against either House of Parliament, the constitution, or the administration of justice. | | | | Fine or imp. or both. | Ibid. |
| LOTTERIES | ... | ... | ... | To be deemed com- mon nuisances. | 42 Geo. 3, c. 119, s. 1. |
| LUNATICS : | | | | | |
| receiving pauper into county or borough asylum without order and medical certificate required. | | | | M, fine or imp, or both. | 16 & 17 Vict. c. 97, s. 73. |
| the like a person not a pauper | | | | M, Ibid. | Ibid. s. 74. |

LUNATICS (continued):

clerk of asylum making untrue entry of death, discharge, or removal of a patient.

physician, &c., signing false certificate, or person signing certificate as physician, &c., when not such.

officer, attendant, &c., striking, ill-treating, or neglecting lunatic.

as to private asylums, see 8 & 9 Vict. c. 100, ss. 23, 27, 29, 44, 49, 50, 52, 54, 59, 63, 64, 68, 90, and 16 & 17 Vict. c. 96, ss. 4, 5, 7, 9, 13, 14, 18.

criminal lunatics, the rescuing any person being conveyed to an asylum for criminal lunatics during his conveyance thereto, or any officer &c., in asylum permitting escape, or conniving at it.

any officer, &c., ill-using or neglecting persons confined in asylum for criminal lunatics.

M, fine or imp, or both.

M, Ibid. ...

M, Ibid. or summarily.

F, P. S. 5 yrs, or imp. 2 yrs h. l.

M, fine or imp. h. l. or fine and imp. or summarily.

16 & 17 Vict. c. 97, s. 93.

Ibid. s. 122.

Ibid. s. 123.

23 & 24 Vict. c. 75, s. 12, and see also 30 Vict. c. 12, ss. 5, 6.

Ibid. s. 13.

MALICIOUS INJURIES TO THE PERSON:

poisoning, stabbing, wounding, &c., with intent to murder.

administration of poison so as to endanger life.

ditto with intent to annoy ...

attempt to murder by poisoning, shooting, strangling, drowning, suffocating, or in any other way.

wounding with intent to maim or resist lawful apprehension.

inflicting bodily injury with or without weapon.

attempting to choke with intent to commit indictable offence.

using chloroform with intent as above.

damaging a building with intent to murder.

setting fire to ship or her apparel with intent to murder.

maiming by explosion of gunpowder.

gunpowder, causing to explode, or sending explosive substance to any person, or throwing corrosive liquid.

gunpowder, placing of, in or near a building with intent to do bodily injury. ...

F, P. S. life, or imp. 2 yrs h. l, s. c.

F, P. S. 10 yrs, or imp. 2 yrs h. l.

M, P. S. 5 yrs, or imp. 2 yrs h. l.

F, P. S. life, imp. 2 yrs h. l, s. c.

F, P. S. life, or imp. 2 yrs h. l, s. c.

M, P. S. 5 yrs, imp. 2 yrs h. l.

F, P. S. life, or imp. 2 yrs h. l. (and w. 26 & 27 Vict. c. 44.)

F, Ibid. w. excepted.

F, Ibid. and s. c.

F, Ibid. and s. c.

Ibid. and w. in case of male under 16.

F, Ibid. ...

F, P. S. 14 yrs, imp. as before.

24 & 25 Vict. c. 100, s. 11.

Ibid. s. 23.

Ibid. s. 24.

Ibid. s. 14, 15.

Ibid. s. 18.

Ibid. s. 20.

Ibid. s. 21.

Ibid. s. 22.

Ibid. s. 12.

Ibid. s. 13.

Ibid. s. 28.

Ibid. s. 29.

Ibid. s. 30.

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| MALICIOUS INJURIES TO PROPERTY : | | |
| throwing into, upon, near, &c., any building with intent to damage it or machinery, &c., gunpowder or explosive substance, whether damage caused or not. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | 24 & 25 Vict. c. 97, s. 10. |
| injuries to, by rioters | F. Ibid. | Ibid. s. 11. |
| malicious injuries to, by tenants | M, fine and imp. or both. | Ibid. s. 13 and common law. |
| machinery, materials for manufactures, &c. | F, P. S. life, or imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 14. |
| ditto agricultural machinery... | F, P. S. 7 yrs, imp. as above. | Ibid. s. 15. |
| hopbinds | F, P. S. 14 yrs, or imp. 2 yrs h. l,† s. c, and male under 16 w. | Ibid. s. 19. |
| trees, shrubs, &c., growing in any park, pleasure-ground, orchard, &c., or any ground adjoining or belonging to a pleasure ground where amount of injury exceeds £1. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 20. |
| the like growing elsewhere, where the damage exceeds £5. | F, Ibid. | Ibid. s. 21. |
| the like, wheresoever growing, the injury being not less than 1s., after two previous summary convictions. | M, imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 22. |
| the like offences in respect to plants, fruits, &c., in gardens, &c., after one previous summary conviction. | F, P. S. 5 yrs, or imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 23. |
| mines, setting fire to a coal mine. | F, P. S. life, or imp. &c., as above. | Ibid. s. 26. |
| attempting to set fire to a mine. | F, P. S. 14 yrs, imp. &c., as above. | Ibid. s. 27. |
| conveying water into them ... | F, P. S. 7 yrs, imp. &c., as above. | Ibid. s. 28. |
| damaging engines belonging to them. | F, Ibid. | Ibid. s. 29. |
| to sea and river banks | F, P. S. life, or imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 30. |
| removing piles, chalk, &c., used for securing sea bank or sea wall, or opening sluice or floodgate, or other damage to navigable river or canal with intent to obstruct the navigation. | F, P. S. 7 yrs, the rest as in last offence. | Ibid. s. 31. |
| to ponds | M, Ibid. | Ibid. s. 32. |
| to bridges, viaducts, &c. ... | F, P. S. life, or imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 33. |
| turnpikes and toll bars... | M, fine or imp. or both. | Ibid. s. 34. |
| telegraphs | M, imp. 2 yrs h. l... | Ibid. s. 37. |
| works of art | M, imp. 6 mths h. l, male under 16 w. | Ibid. s. 39. |

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| MALICIOUS INJURIES TO PROPERTY (<i>continued</i>): | | | |
| cattle | | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 97, s. 40. |
| ships—damage otherwise than by fire or explosive substances. | | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. | Ibid. s. 46. |
| masking, altering, &c., any signal, or maliciously doing anything tending to the immediate loss or destruction of a ship for which no punishment provided. | | F, P. S. life, or imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 47. |
| cutting adrift, altering, concealing, &c., boat, buoy, rope, &c., intended for the guidance of seamen, or the purposes of navigation. | | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, and male under 16 w. | Ibid. s. 48. |
| destroying any part of any vessel in distress, or stranded or cast ashore, or any goods of any kind belonging to such vessel. | | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 49. |
| other injuries to real or personal property not provided for in the act, &c., exceeding £5. | | M, imp. 2 yrs h. l. | Ibid. s. 51. |
| the like offence, if committed between nine in the evening and six in the morning. | | M, P. S. 5 yrs, or imp. 2 yrs h. l. | Ibid. |
| unlawfully or maliciously placing, throwing upon, or into, &c., any ship, gunpowder, or other explosive substance, with intent to destroy or damage, whether injury effected or not. | | F, P. S. 4 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 45. |
| making or manufacturing, or knowingly having in possession gunpowder, or explosive substance, or dangerous or noxious thing or machine, &c., with intent thereby, or by means thereof, to commit, or enable another to commit, any felonies mentioned in this act (24 & 25 Vict. c. 97.) | | M, imp. 2 yrs h. l, s. c, male under 16 w. | Ibid. s. 54. |
| Ibid. as 24 & 25 Vict. c. 100, and see "Arson." | | M, Ibid. | 24 & 25 Vict. c. 100, s. 64. |
| MANSLAUGHTER | | F, P. S. life, or imp. 2 yrs h. l, or fine in addition, or fine alone. | 24 & 25 Vict. c. 100, s. 5. |
| MARINES (DESERPTION), see "Ship." | | | |
| MARRIAGE : | | | |
| clergyman solemnising at improper time or place, or person falsely pretending to be in holy orders solemnising. | | F, P. S. 14 yrs. ... | 4 Geo. 4, c. 76, s. 21. |

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| MEDICAL PRACTITIONERS: any registrar making falsification in any matter connected with the register. any person fraudulently procuring himself to be registered under the act, or attempting to do so. | M, imp. not exceed- 1 yr. M, Ibid. | 21 & 22 Vict. c. 90, s. 38. Ibid. s. 39. |
| MILITARY LAW: conveying into prison tools, &c., to facilitate escape of prisoner, or aiding by any means the escape of prisoner. | F, P. S. 6 yrs, and not less than 4 yrs, or imp. 2 yrs h. l. | 30 Vict. c. 13, s. 83. |
| MUNICIPAL CORPORATIONS ACT: offences against | M, P. S. 5 yrs, or imp. 2 yrs h. l, or fine. | 20 & 21 Vict. c. 54, s. 10; 23 Vict. c. 16, s. 7. |
| MURDER | F, death. | 24 & 25 Vict. c. 100, ss. 1, 2, 3, and 31 Vict. c. 24. |
| accessories after the fact ... | F, P. S. life, or imp. 2 yrs. | 24 & 25 Vict. c. 100, s. 67. |
| conspiring to murder any person, whether subject of Her Majesty or not, and whether he be within the Queen's dominions or not, and soliciting to the murder of any person as above. | M, P. S. 10 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 4. |
| NAVAL STORES: without authority (proof on accused) applying the authorised marks of ownership in or on stores. with intent to conceal Her Majesty's property in any stores, obliterating, &c. wholly or in part such mark. without authority (proof on accused) receiving, &c. stores, bearing such mark, or part thereof, if above 5l. in value. | M, imp. 2 yrs h. l. F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c. M, imp. 1 yr h. l. | 30 & 31 Vict. c. 119, s. 5. Ibid. s. 6. Ibid. s. 7. |
| NUISANCE: obstructing highway, &c. ... | M, fine or imp. or both. | Common law. |
| OATHS (unlawful): administering, or causing to be administered, oath to commit treason, murder, or any felony punishable with death. taking same without being compelled. administering to, &c., or present at, administration of oath to disturb public peace, or engage in seditious purposes, or taking same without being compelled. | F, P. S. life, and not less than 15 yrs, or imp. 3 yrs h l, s. c. F, P. S. life. ... F, P. S. 7 yrs. ... | 52 Geo. 3, c. 104, s. 1. Ibid. 37 Geo. 3, c. 123, s. 1. |

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| OATHS (voluntary): justice of the peace, or other administering oath when not authorised by law. | M, fine or imp. or both. | 5 & 6 Will. 4, c. 62, s. 13. |
| PERJURY: perjury, or subornation of per- jury. | M, P. S. 7 yrs, or imp. h.l. 7 yrs, and incompetency as witness, or fine and imp. (h. l. 3 Geo. 4, c. 114). | 2 Geo. 2, c. 25, s. 2. |
| PERSONATION: of soldiers for their prize money, &c. of seamen, see "Ships." without lawful authority (onus on accused), acknowledging recognisance, bail, <i>cognovit</i> <i>actionem</i> , &c., or any instru- ment before judge or person lawfully authorised in that behalf. | F, P. S. life. ... F, P. S. 7 yrs, or imp. 2 yrs h.l, s.c. | 9 & 10 Vict. c. 24, s. 1. 24 & 25 Vict. c. 98, s. 34. |
| PIRACY: • whether at common law or by statute. assaulting with intent to mur- der, or stabbing, wounding, &c., or doing any act whereby life may be endangered with intent to commit, or at the time, or immediately before, or after committing piracy. | F, the same as if a robbery committed upon land. F, death (sentence recorded 4 Geo. 4, c. 48, s. 1; 2 & 3 Vict. c. 56, s. 17.) | 7 & 8 Geo. 4, c. 28, s. 12. 7 Will. 4 & 1 Vict. c. 88, s. 2. |
| POISON , see "Malicious In- juries," <i>ante</i> . | | |
| POLICE , see "Public Service." | | |
| POOR: parish officer promoting mar- riage of the mother of a bastard child improperly. wilfully injuring, &c., poor- rate, book, or giving false evidence before union assess- ment committee. person employed in execution of a warrant for removal of Irish poor wilfully deserting pauper on the journey. | M, fine or imp, or both. M, Ibid. M, Fine, imp. in de- fault not exceeding 3 mths. | 7 & 8 Vict. c. 101, s. 8. 25 & 26 Vict. c. 103, s. 40. 26 & 27 Vict. c. 89, s. 4. |
| POST OFFICE: stealing or embezzling letters.. ditto, if containing money ... stealing from letters or stealing a post letter bag, letters from it, or a mail, or stopping a mail stealing a post letter from a post office packet. | F, P. S. 7 yrs, or imp. 3 yrs h.l, s.c. F, life, or imp. 4 yrs h. l, s. c. F, Ibid. F, P. S. 14 yrs, or imp. 3 yrs h. l, s. c. | 7 Will. 4 & 1 Vict. c. 36, s. 26. Ibid. Ibid. ss. 27, 28. Ibid. s. 29. |

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| POST OFFICE (<i>continued</i>): | | |
| receiving letters, bags, money, &c., stolen, embezzled, &c. | F, P. S. life, or imp. 4 yrs h. l, s. c. | 7 Will. 4 & 1 Vict. c. 36, s. 30. |
| opening or delaying letters ... | M, fine or imp. or both, h. l, s. c. | Ibid. s. 25. |
| retaining or secreting, or refusing to deliver up letters, &c., lost or misdelivered. | M, fine and imp. h. l, s. c. | Ibid. s. 31. |
| stealing or detaining parliamentary votes, &c., or newspapers. | M, fine and imp. h. l, s. c. | Ibid. s. 32. |
| writing, &c., in newspapers sent by post. | M, fine or imp. or both. | Ibid. s. 5. |
| forging the handwriting of the Receiver-General of the Post Office. | F, P. S. life, or imp. 4 yrs h. l, s. c. | Ibid. s. 33. |
| forging the superscription of a post letter. | F, P. S. 7 yrs ... | Ibid. s. 34. |
| forging dies for marking postage or postage stamps, &c. | F, P. S. life, or imp. 4 yrs. | 3 & 4 Vict. c. 96, s. 22. |
| making moulds, &c., used for postage envelopes, &c. | F, P. S. 7 yrs, or imp. 2 yrs. | Ibid. s. 29. |
| having possession of postage envelopes before issued for public use. | M, imp. 3 yrs. | Ibid. s. 30. |
| accessories after the fact. | F, imp. 2 yrs h. l, s. c. | 7 Will. 4 & 1 Vict. c. 36, s. 35. |
| soliciting others to commit a felony or misdemeanor. | M, Ibid. ... | Ibid. s. 36. |
| officer of post office granting or issuing any money order with a fraudulent intent. | F, P. S. not less than 5 yrs, or imp. 3 yrs. | 11 & 12 Vict. c. 88, s. 4. |
| PRINCIPALS IN SECOND DEGREE, see "Accessories," <i>ante</i> . | | |
| PRIZE FIGHT: | | |
| persons present and aiding thereat. | M, punishable as for assault and riot. | Common law. |
| PUBLIC SERVICE: | | |
| larceny by servants ... | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 69. |
| embezzlement ditto ... | F, Ibid. s. c. excepted | Ibid. s. 70. |
| QUEEN, THE: | | |
| discharging, &c., firearms at or near the person of the Queen with intent to injure or alarm her, &c. | M, P. S. 7 yrs, or imp. 3 yrs h. l, w. | 5 & 6 Vict. c. 51, s. 2. |
| producing gun or explosive matter, &c., near the Queen, with intent to use the same, &c. | M, Ibid. ... | Ibid. |
| RAILWAYS: | | |
| servants of company guilty of misconduct whilst employed, or negligently doing or omitting to do any act whereby life shall be endangered or trains impeded. | M, imp. 2 yrs h. l.... | 3 & 4 Vict. c. 97, ss. 13, 14; 5 & 6 Vict. c. 55, s. 17. |
| obstructing engines ... | M, Ibid. ... | 24 & 25 Vict. c. 97, s. 36. |

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| POST OFFICE (<i>continued</i>): | | |
| any person, by wilful omission or neglect, endangering the safety of any person conveyed, or being in or upon a railway, and aiding or assisting therein. | M, imp. 2 yrs h. l.... | 24 & 25 Vict. c. 100, s. 34. |
| placing anything on a railway, or displacing rail or sleeper, or diverting points, or making &c., signal, or maliciously doing other matter with intent in any of these cases to obstruct, upset, or destroy any engine, carriage, &c. | F, P. S. life, or imp. 2 yrs h. l, male under 16 w. | 24 & 25 Vict. c. 97, s. 35. |
| ditto with intent to endanger the safety of any person travelling or being upon a railway casting stone, &c., at engine, &c. | F, Ibid | Ibid. c. 100, s. 32. |
| | F, P. S. life, or imp. 2 yrs h. l. | Ibid. s. 33. |
| RAPE | F, P. S. life, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 48. |
| carnal knowledge of children under ten. | F, P. S. life, or imp. 2 yrs h. l. | Ibid. s. 50. |
| ditto between ten and twelve... | F, P. S. 5 yrs, imp. 2 yrs h. l. | Ibid. s. 51. |
| attempt to have carnal knowledge of children under 12. | M, imp. 2 yrs h. l. | Ibid. s. 52. |
| REAL ESTATE: | | |
| (as to registration) making material false statement, &c., or suppressing or concealing from registrar material documents, &c., relating to land put upon the registry. | M, imp. 3 yrs h. l, or fine, as court shall award. | 25 & 26 Vict. c. 53, s. 105. |
| fraudulently procuring, &c., order of Court of Chancery in relation to registered land, or the entry on the register of any caveat or notice of a charge, &c. | M, imp. 3 yrs, or fine as court may think just. | Ibid. ss. 138, 139. |
| declaration of title (similar offences). | M, similar punishment. | 25 & 26 Vict. c. 67, ss. 44, 45. |
| RECEIVERS: | | |
| where principal offence a felony. | F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c, male under 16 w. | 24 & 25 Vict. c. 96, s. 91. |
| where a misdemeanor. | M, P. S. 7 yrs, the rest as above. | Ibid. s. 95. |
| REGISTERS: | | |
| births, deaths, marriages, burials, baptisms, destroying or defacing, or altering, or forging or making false entry in register, giving false certificate, or certifying any writing to be true copy knowing it not to be such in any material particular, or forging the seal of register office or burial board, or uttering, &c., such fraudulent register or copy of entry. | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 98, s. 36. |

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| REGISTERS (<i>continued</i>): inserting, &c., false entry in any copy of any register directed or required by law to be transmitted to any registrar, or forging or uttering such, or signing, verifying, &c., copy of register so directed or required to be sent which shall be false in any part thereof, injuring, &c., any such copy. | F, P. S. life, or imp. 2 yrs h. l. s. c. | 24 & 25 Vict. c. 98, s. 37. |
| REGISTRATION AND MARRIAGE ACTS: | M, the penalties of perjury. | 6 & 7 Will. 4, c. 85, s. 38; 7 Will. & 1 Vict. c. 22; 3 & 4 Vict. c. 72, s. 4; 19 & 20 Vict. c. 119, ss. 2, 18. |
| making false declaration, or signing false notice as to marriage, or falsely forbidding the issue of the superintendent registrar's certificate. | M, Ibid. | 6 & 7 Will. 4, c. 86, s. 41. |
| making false statement for insertion in register of birth, death, or marriage. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c, w. | 6 & 7 Will. 4, c. 85, s. 39. |
| solemnising marriage without licence, or in unregistered building. | F, Ibid. | 7 Will. 4 & 1 Vict. c. 22, s. 3. |
| superintendent registrar unduly issuing licence for or solemnising marriage declared void. | F, P. S. 7 yrs, or imp. 2 yrs h. l, s. c, male under 18 w. | 24 & 25 Vict. c. 96, s. 101. |
| REWARDS: corruptly taking reward for recovery of stolen property without using due diligence to cause offender to be brought to trial. | M, fine or imp, or both (h. l. 3 Geo. 4, c. 114.) | Common law. |
| RIOT | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 97, s. 11. |
| demolishing buildings | M, P. S. 7 yrs, or imp. 2 yrs h. l. | Ibid. s. 12. |
| injuring buildings | F, P. S. life, and not less than 7 yrs, or imp. 3 yrs. | 7 Will. 4 & 1 Vict. c. 91, ss. 1, 2; 20 & 21 Vict. c. 3, s. 2; 9 & 10 Vict. c. 24, s. 1. |
| offences against Riot Act (1 Geo. 1, stat. 2, c. 5). | M, P. S. 7 yrs, or imp. 2 yrs. | 39 Geo. 3, c. 79. |
| seditious meetings, &c. | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 50. |
| ROBBERY , see "Assault" and "Larceny," <i>ante</i> . | M, fine or imp. or both. | 26 & 27 Vict. c. 87, s. 5. |
| SACRILEGE | F, P. S. life, or imp. 2 yrs h. l, s. c. | 24 & 25 Vict. c. 96, s. 50. |
| SAVINGS BANKS: any company, &c., using the title "Savings Bank certified under Act of 1863" not entitled thereto. | M, fine or imp. or both. | 26 & 27 Vict. c. 87, s. 5. |

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| SAVINGS BANKS (<i>continued</i>): officer of, receiving deposits and not duly accounting for them. | M, fine or imp, or both. | 26 & 27 Vict. c. 87, s. 9. |
| SCALES AND WEIGHTS: selling by false | M, fine or imp, or both. | Common law. |
| SERVANTS: master or mistress neglecting to provide necessary food, clothing, and lodging for servant or apprentice. unlawfully doing or causing bodily harm to be done to servant or apprentice so as to endanger health, or render likely to be permanently in- jured. | M, P. S. 5 yrs, or imp. 2 yrs h. l. M, Ibid. | 24 & 25 Vict. c. 100, s. 26. Ibid. |
| SHIPS: uttering false petitions, certi- ficates, &c., in order to sus- tain claim to payment from the compassionate fund of the navy, &c. personating anyone entitled to pay, wages, prize money, &c., payable from Admiralty. | M, P. S. 5 yrs, or imp. 2 yrs h. l, s. c. M, Ibid. | 28 & 29 Vict. c. 124, s. 6. Ibid. s. 8. |
| masters of ships using impro- per certificate of registry, permitting to be carried papers, &c., with intent to conceal British character of ship, or to assume foreign character, or making false declarations of qualifications of owners, falsifying agree- ments of seamen, or assisting therein, &c., not making re- ports of character of persons discharged before shipping master, or making false re- ports of service, &c., forcing seamen or apprentices on shore, or leaving them be- hind before completion of voyage, discharging or leav- ing apprentice abroad with- out certificate of some func- tionary, misconduct, breach of duty, &c., endangering the ship, or life, or limb, destroy- ing, mutilating, &c., any entry in official logs, or making a false entry therein, owners and masters not obeying regulations concern- ing lights, fog signals, sailing rules in Act 25 & 26 Vict. c. 63, ss. 25, 26, 27. | M, fine or imp. h. l. (misdemean- ors under 17 & 18 Vict. c. 104, may be dealt with in a sum- mary manner.) | 17 & 18 Vict. c. 104, 25 & 26 Vict. c. 63, and for offences at sea see 30 & 31 Vict. c. 124. |
| pilot, guilty of breach of duty, endangering ship, life, or limb. | M Ibid. | 17 & 18 Vict. c. 104, s. 366. |

SHIPS (continued):

shipping master or other public officer, granting or issuing any money order with a fraudulent intent.

F, P. S. 5 yrs. ... 17 & 18 Vict. c. 104, s. 179.

forging or assisting in forging any register, book, certificate of surveyor, of registry, of ownership, bill of sale, mortgage, &c.

F, P. S. 7 yrs, or imp. 2 yrs. Ibid. s. 101, and 7 & 8 Geo. 4, c. 28, ss. 8, 9.

selling wreck or part of cargo in foreign port.

F, P. S. 5 yrs. ... 17 & 18 Vict. c. 104, s. 479.

forgery or making false representations in order to obtain money deposits in a seamen's savings bank, or any interest thereon, or assisting therein.

M, P. S. 5 yrs, or imp. 2 yrs h. l, or summarily. 19 & 20 Vict. c. 41, s. 6.

the like, in relation to the Merchant Seamen's Fund.

M, P. S. 7 yrs, or summarily. 14 & 15 Vict. c. 102, s. 55.

fraudulently altering forms issued by Board of Trade, making, &c., false representations for obtaining certificate of competency or service, or making use of forged certificate, falsifying agreement with seamen, making or procuring to be made false certificate of service, &c., or forging certificate, forgery or false representations in order to obtain wages or property of deceased seamen, forgery or false representation in support of application to Admiralty for compensation on account of seamen volunteering into the navy, forging or altering certificate of Board of Trade as to passenger steamer, and see "Malicious Injuries" and "Arson."

Fine or imp. h. l, and summarily. 17 & 18 Vict. c. 104, s. 518.

falsely confessing to have deserted from marine forces.

M, P. S. 7 yrs, or fine or imp, or both, the imp. with h. l, s. c. 30 Vict. c. 14, s. 53.

SMUGGLING:

making signals to smuggling vessels. after sunset and before sunrise, between 21st Sept. and 1st April, or after 8 p.m. and before 6 a.m. at any other part of the year.

M, fine 100l. or imp. 1 yr h. l. 16 & 17 Vict. c. 107, s. 244.

armed assemblies, to the number of three or more, for smuggling, or persons assisting therein.

F, P. S. life, not less than 15 yrs, or imp. 3 yrs h. l, s. c. Ibid. s. 248.

shooting at boats, &c., within 100 leagues, or wounding officers, &c. of the navy.

F, Ibid. ... Ibid. s. 249.

in company with more than four others with smuggled goods, or with one other person with goods, or armed and disguised,

F, P. S. 7 yrs. ... Ibid. s. 250.

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| SMUGGLING (continued): assaulting or opposing officers on duty. the like while searching for goods. | M, P. S. 7 yrs, or imp. 3 yrs h. l. M, imp. 3 yrs h. l, in lieu, or in addition to any other punishment or penalty. | 16 & 17 Vict. c. 107, s. 251. 7 & 8 Geo. 4, c. 53, ss. 40, 43. |
| SODOMY (AND BESTIALITY) ... attempt to commit, or assault with intent to commit the same, or an indecent assault upon male. | P. S. life, and not less than 10 yrs. M, P. S. 10 yrs, and imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 61. Ibid. s. 62. |
| SPRING GUNS AND MAN TRAPS: placing, &c. of. | M, P. S. 5 yrs, or imp. 2 yrs h. l. | 24 & 25 Vict. c. 100, s. 31. |
| STOCKING FRAMES: selling or disposing of hired stocking frames, &c., or receiving, or purchasing same. | M, imp. 1 yr, not less than 3 mths s. c. | 28 Geo. 3, c. 55, ss. 2, 3. |
| SUBSEQUENT FELONY: committing felony, not punishable with death (not being simple larceny, 24 & 25 Vict. c. 96, s. 7) committed after previous conviction for felony. | F, P. S. life, and not less than 7 yrs, or imp. not exceeding 4 yrs h. l, s. c, w. | 20 & 21 Vict. c. 3, s. 2, and 27 & 28 Vict. c. 47, s. 1. |
| SUICIDE: attempting to commit. | M, fine, or imp. h. l (3 Geo. 4, c. 114), or both. | Common law. |
| TELEGRAPHS, see "Malicious Injuries." | | |
| TRADE MARKS: with intent to defraud, or to enable another to defraud, forging or falsely applying any trade mark, or any forged trade mark to any chattel or article. with intent to defraud, or to enable another to defraud, applying a forged trade mark to any vessel, wrapper, &c. persons aiding in commission of the above offences. | M, imp. 2 yrs h. l, or fine, or both imp. and fine, and imp. till fine be paid. M, Ibid, articles to be forfeited or destroyed. M, Ibid. | 25 & 26 Vict. c. 88, s. 2. Ibid, s. 3, Ibid. s. 13. |
| TRADING COMPANIES: director, officer, or contributory of company wound up, falsifying books, &c., with intent to defraud or deceive. any person upon oath, affidavit, &c., wilfully and corruptly giving false evidence. | M, imp. 2 yrs h. l... M, penalties of perjury. | 25 & 26 Vict. c. 89, s. 166. Ibid. s. 169. |

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| <p>TRADING COMPANIES (<i>continued</i>): a director, manager, or officer of a company wilfully concealing the name of a creditor entitled to object to reduction of capital, or misrepresenting the nature or amount of debt of a creditor, or director, or manager, aiding or abetting, or being privy to such concealment or misrepresentation. forging, or uttering, &c. a share, warrant or coupon, or a document, purporting to be such, or endeavouring to get dividend by means of forged share warrant, &c. personating owner of share in company, or of share warrant, or coupon, and obtaining or endeavouring to obtain same or any money due to owner. engraving on plate, &c., any share, warrant, or coupon, or having possession thereof.</p> | <p>M, fine or imp, or both. F, P. S. life, or imp. 2 yrs h. l, s. c. F, Ibid. F, P. S. 14 yrs, or imp. 2 yrs h. l, s. c.</p> | <p>30 & 31 Vict. c. 131, s. 19. Ibid. s. 34. Ibid. s. 35. Ibid. s. 36.</p> |
| <p>TREASON compassing or devising, &c., to depose Her Majesty or to levy war, in order to intimidate either House of Parliament, or to stir up foreigners by publishing any printing or writing. accessories after the fact ...</p> | <p>Death for offences against Sovereign, against others P. S. life, or imp. 2 yrs. F, P. S. life, or imp. 2 yrs h. l. F, imp. 2 yrs h. l. ...</p> | <p>11 Vict. c. 12. Ibid. s. 3. Ibid. s. 8.</p> |
| <p>TREASURE TROVE: concealing the finding from the Crown.</p> | <p>M, fine or imp. or both.</p> | <p>Common law.</p> |
| <p>VACCINATION: signing false certificate of successful vaccination.</p> | <p>M, fine or imp. or both.</p> | <p>30 & 31 Vict. c. 84, s. 30.</p> |
| <p>VALUABLE SECURITY, see "Larceny" and "False Pretences."</p> | | |
| <p>VENDORS: seller or mortgagor of land or of chattels, real or personal, or choses in action conveyed to purchaser, or mortgagee, or solicitor, or agent of such, concealing any instrument material to the title, or falsifying pedigree in order to induce the acceptance of title produced, and with intent to defraud.</p> | <p>M, fine and imp. 2 yrs h. l, or fine or both as court shall award, and liability to action for damages.</p> | <p>22 & 23 Vict. c. 35, s. 24; and 23 & 24 Vict. c. 38, s. 8.</p> |

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| <p>WAR DEPARTMENT : without lawful authority (onus on accused) applying any of the authorised marks of ownership, in or on any stores. obliterating mark, with intent to conceal Her Majesty's property in stores. without lawful authority (onus on accused) receiving, possessing, selling, &c., any stores bearing such mark, or part of such mark, knowing them to bear such mark.</p> | <p>M, imp. 2 yrs h. 1. F, P. S. 5 yrs, or imp. 2 yrs h. 1, s. c. M, imp. 1 yr h. 1.</p> | <p>30 & 31 Vict. c. 128, s. 5. Ibid. s. 6. Ibid. s. 7.</p> |
| <p>WITCHCRAFT : pretending to use, or pretending from skill in occult science to discover where goods lost or stolen may be found.</p> | <p>M, imp. 1 yr, sureties for good behaviour.</p> | <p>9 Geo. 2, c. 5, s. 4.</p> |
| <p>WOMEN : by false pretences, false representations, or other fraudulent means, procuring any woman under twenty-one to have illicit connection with a man.</p> | <p>M, imp. 2 yrs h. 1....</p> | <p>24 & 25 Vict. c. 100, s. 49.</p> |
| <p>WORKS OF ART, see "Malicious Injuries."</p> | | |
| <p>WORKSHOP REGULATION : forging, or counterfeiting certificate required by act, or giving, or signing such falsely, or making use of forged certificate, or conniving at these offences. forging Home Secretary's certificate of appointment of Inspector or Sub-Inspector of factories, or making use of forged certificate, or falsely pretending to be Inspector or Sub-Inspector of factories.</p> | <p>M, imp. 3 mths h. 1. M, Ibid.</p> | <p>30 & 31 Vict. c. 146, s. 17. Ibid. s. 20.</p> |
| <p>WOUNDING, see "Assault," and "Malicious Injuries," ante.</p> | | |

THE
CRIMINAL LAW
CONSOLIDATION ACTS.

Criminal Law

CONSOLIDATION ACTS, 1861.

I.

ACCESSORIES AND ABETTORS ACT.

24 & 25 VICT. CAP. 94.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Accessories to and Abettors of indictable Offences. — [6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of England and Ireland relating to accessories to and abettors of indictable offences: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

As to accessories before the fact :

1. Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

Accessories before the fact may be tried and punished as principals.

Accessories
before the
fact may be
indicted as
such, or as
substantive
felons.

2. (1) Whosoever shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.

As to accessories after the fact :

Accessories
after the fact
may be in-
dicted as
such, or as
substantive
felons.

3. Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may there-

(1) In *Reg. v. Gregory* (10 Cox Crim. Cas. 459; 36 L. J. M. C. 60) it was held that a person cannot be indicted under this section for counselling another to commit a felony unless a felony be actually committed by such other person. The proper course is to indict as at common law for the misdemeanor of *inciting* to commit a felony. In this case Kelly, C. B., said: "Looking at the provisions of the statute, I think it is absolutely necessary to support a conviction under the above section that a substantive felony has been committed by the person counselled. That is the grammatical construction of the section. How can there be an accessory before the fact to the 'principal felony,' or a 'principal felon,' if no felony has been committed? The offence committed therefore is properly charged as a misdemeanor, and the conviction is right."

upon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

4. Every accessory after the fact to any felony (except where it is otherwise specially enacted), whether the same be a felony at common law or by virtue of any act passed or to be passed, shall be liable, at the discretion of the court, to be imprisoned in the common gaol or house of correction for any term not exceeding two years, with or without hard labour, and it shall be lawful for the court, if it shall think fit, to require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to such punishment: provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Punishment
of acces-
sories after
the fact.

As to accessories generally :

5. If any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall upon conviction suffer the same punishment as he would have suffered if the principal had been attainted.

Prosecution
of accessory
after
principal
has been
convicted,
but not
attainted.

6. Any number of accessories at different times to any felony, and any number of receivers at different times of property stolen at one time, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

Several
accessories
may be
included in
the same
indictment
although
principal
felon not
included.

Trial of
accessories.

7. Where any felony shall have been wholly committed within England or Ireland, the offence of any person who shall be an accessory either before or after the fact to any such felony may be dealt with, inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felony, or any felonies committed in any county or place in which the act by reason whereof such person shall have become such accessory shall have been committed; and in every other case the offence of any person who shall be an accessory either before or after the fact to any felony may be dealt with, inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within Her Majesty's dominions or without, or partly within Her Majesty's dominions and partly without; provided that no person who shall be once duly tried either as an accessory before or after the fact, or for a substantive felony under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

As to abettors in misdemeanors :

Abettors in
misdemeanors.

8. Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law or by virtue of any act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

As to other matters :

As to
offences

9. Where any person shall, within the juris-

diction of the Admiralty of England or Ireland, become an accessory to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, and whether such felony shall be committed within that jurisdiction or elsewhere, or shall be begun within that jurisdiction and completed elsewhere, or shall be begun elsewhere and completed within that jurisdiction, the offence of such person shall be felony ; and in any indictment for any such offence the venue in the margin shall be the same as if the offence had been committed in the county or place in which such person shall be indicted, and his offence shall be averred to have been committed “on the high seas ;” provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty’s land or naval forces.

committed
within the
jurisdiction
of the
Admiralty.

10. Nothing in this act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

Act not to
extend to
Scotland.

11. This act shall commence and take effect on the first day of November one thousand eight hundred and sixty one.

Commence-
ment of act

II.

CRIMINAL STATUTES REPEAL ACT.

24 & 25 VICT. CAP. 95.

An Act to repeal certain Enactments which have been consolidated in several Acts of the present Session relating to indictable Offences and other Matters.—[6th August, 1861.]

WHEREAS by six several acts of the present session of Parliament, relating respectively to offences against the person, malicious injuries to property, larceny, forgery, coining, and accessories and abettors, divers acts and parts of acts have been consolidated and amended, and it is expedient to repeal the enactments so consolidated and amended, and certain other enactments: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of
acts and
parts of acts
mentioned
in schedule.

1. The several acts and parts of acts in the schedule hereto annexed shall continue in force until and throughout the last day of October in the present year, and shall from and after that day be repealed to the extent following; (that is to say,) in any case where the enactment does not form part of the law of Scotland then the enactment shall be wholly repealed, but in any case where the enactment does form part of the law of Scotland, then the enactment shall be wholly repealed as to every other place, but shall not be repealed as to Scotland, unless otherwise expressly mentioned.

2. Provided, that where any enactment shall have been extended to any part of Her Majesty's dominions out of the United Kingdom by any Act of the Parliament of the United Kingdom or otherwise, the same shall not be repealed as to that part of Her Majesty's dominions.

Repeal not to affect the colonies in certain cases

3. Provided also, that every offence which shall have been wholly or partly committed against any of the said acts or parts of acts before this act comes into operation shall be dealt with, inquired of, tried, determined, and punished, and every penalty in respect of any such offence shall be recovered in the same manner as if the said acts and parts of acts had not been repealed; and that every act duly done, and every warrant and other instrument duly made or granted, before this act comes into operation, shall continue and be of the same force and effect as if the said acts and parts of acts had not been repealed; and that every right, liability, privilege, and protection in respect of any matter or thing committed or done before this act comes into operation shall continue and be of the same force and effect as if the said acts and parts of acts had not been repealed; and that every action, prosecution, and other proceeding which shall have been commenced before this act comes into operation, or shall thereafter be commenced, in respect of any such matter or thing, may be prosecuted, continued, and defended in the same manner as if the said acts and parts of acts had not been repealed.

Repeal not to affect offences, &c. committed before the commencement of this act.

4. Provided also, that nothing herein contained shall in any manner alter or affect any power or authority given by any act to alter or amend any register of births, baptisms, marriages, deaths, or burials.

Repeal not to affect any authority to amend registers of births, &c.

THE SCHEDULE.

| References to Act. | Title of Act. | Extent of Repeal. |
|-----------------------------------|---|--|
| 10 Car. 1, sess. 3, c. 20 (I.) | An Act against such as shall levie any fine, suffer any recovery, acknowledge any statute, recognisance, baile, or judgment in the name of any other person or persons not being privie and consenting thereto. | The whole. |
| 7 Will. 3, c. 18 (I.) | An Act for taking special bails in the country upon actions and suits depending in the Courts of King's Bench, Common Pleas, and Exchequer at Dublin. | Section four. |
| 2 & 3 Ann, c. 4 | An Act for the public registering of deeds, conveyances, and wills that shall be made of any honors, manors, lands, tenements, or hereditaments within the West Riding of the county of York after the nine-and-twentieth day of September one thousand seven hundred and four. | So much of section nineteen as relates to any forging or counterfeiting therein mentioned. |
| 6 Ann, c. 2 (I.) | An Act for the public registering of all deeds, conveyances, and wills that shall be made of any honors, manors, lands, tenements, or hereditaments. | So much of section seventeen as relates to any forging or counterfeiting therein mentioned. |
| 6 Ann, c. 35 | An Act for the public registering of all deeds, conveyances, wills, and other incumbrances, that shall be made of, or that may affect any honors, manors, lands, tenements, or hereditaments within the East Riding of the county of York, or the town and county of the town of Kingston-upon Hull, after the nine-and-twentieth day of September one thousand seven hundred and eight; and for the rendering the register in the West Riding more complete. | So much of section twenty-six as relates to any forging or counterfeiting therein mentioned. |

| References to Act. | Title of Act. | Extent of Repeal. |
|----------------------|---|---|
| 7 Ann, c. 20 | An Act for the public registering of deeds, conveyances, and wills, and other incumbrances, which shall be made of, or that may affect honors, manors, lands, tenements, or hereditaments within the county of Middlesex after the twenty-ninth day of September one thousand seven hundred and nine. | So much of section fifteen as relates to any forging or counterfeiting therein mentioned. |
| 8 Ann, c. 10 (I.) | An Act for amending an Act intituled "An Act for the public registering of all deeds, conveyances, and wills that shall be made of any honors, manors, lands, tenements, or hereditaments." | So much of section four as relates to any forging or counterfeiting therein mentioned. |
| 8 Geo. 1, c. 15 (I.) | An Act for explaining and amending two several Acts in relation to the public registering of deeds, conveyances, and wills. | So much of section four as relates to any forging or counterfeiting therein mentioned. |
| 11 Geo. 1, c. 9 | An Act for continuing the several annuities of eighty-eight thousand seven hundred and fifty-one pounds seven shillings and tenpence halfpenny and one hundred thousand pounds to the Bank of England until Midsummer one thousand seven hundred and twenty-seven, and from thence for reducing the same to seventy-one thousand and one pounds two shillings and threepence three farthings and eighty thousand pounds, redeemable by Parliament, and for preventing the uttering of forged, counterfeited, or erased bank bills or notes. | Section six. |
| 12 Geo. 1, c. 32 | An Act for better securing the moneys and effects of the suitors of the Court of Chancery, and to prevent the counterfeiting of East India bonds, and indorsements thereon; as likewise indorsements on South Sea bonds. | Section nine. |
| 3 Geo. 2, c. 4 (I.) | An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other secu- | Section one. |

| References to Act. | Title of Act. | Extent of Repeal. |
|-------------------------------|--|--|
| 8 Geo. 2, c. 6 | rities for payment of money, and for the more effectual transporting felons, vagabonds, and others. An Act for the public registering of all deeds, conveyances, wills, and other incumbrances that shall be made of, or that may affect any honors, manors, lands, tenements, or hereditaments within the North Riding of the county of York, after the nine-and-twentieth day of September one thousand seven hundred and thirty-six. | So much of section thirty-one as relates to any forging or counterfeiting therein mentioned. |
| 15 Geo. 2, c. 13 | An Act for establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of one million six hundred thousand pounds towards the supply for the service of the year one thousand seven hundred and forty-two. | Section twelve. |
| 17 Geo. 2, c. 11 (I.) | An Act for the amendment of the law in relation to forgery, and the salvage of ships and goods stranded | Section one. |
| 13 & 14 Geo. 3, c. 14 (I.) | An Act for the more effectual preventing the forging or altering the acceptance or indorsement of bills of exchange, or the numbers or principal sums of accountable receipts for notes, bills, or other securities for payment of money, or warrants or orders for payment of money or delivery of goods. | The whole. |
| 21 & 22 Geo. 3, c. 16 (I.) | An Act for establishing a bank by the name of the Governor and Company of the Bank of Ireland. | Sections fifteen and sixteen. |
| 23 & 24 Geo. 3, c. 22 (I.) | An Act for better securing the moneys and effects of the suitors of the Court of Chancery and the Court of Exchequer by depositing the same in the National Bank; and to prevent the forging and counterfeiting any draft, order, or other voucher for the payment or delivery of such money or effects; and for other purposes. | Section twenty-two. |
| 25 Geo. 3, c. 37 (I.) | An Act to explain and amend an Act passed in the thirteenth and fourteenth years of the reign of his present Majesty King George | The whole. |

| References to Act. | Title of Act. | Extent of Repeal. |
|--------------------------|--|--|
| 27 Geo. 3, c. 15 (I.) | <p>the Third, intituled "An Act for the more effectually preventing the forging or altering the acceptance or indorsement of bills of exchange, or the numbers or principal sums of accountable receipts for notes, bills, or other securities for payment of money, or warrants or orders or payment of money or delivery of goods."</p> <p>An Act to prevent tumultuous risings and assemblies, and for the more effectual punishment of persons guilty of outrage, riot, and illegal combination, and of administering and taking unlawful oaths.</p> | Section five. |
| 35 Geo. 3, c. 66 | An Act for making part of certain principal sums or stock and annuities raised or created or to be raised or created by the Parliament of the Kingdom of Ireland on loans for the use of the government of that kingdom transferable, and the dividends on such stock and annuities payable at the Bank of England; and for the better security of the proprietors of such stocks and annuities, and of the Governor and Company of the Bank of England. | Section three and all the subsequent sections. |
| 37 Geo. 3, c. 26 (I.) | An Act to prevent the forging of notes and bills of the Governor and Company of the Bank of Ireland, and to prevent the obtaining of false credit, and the committing of frauds by the imitation of notes or bills of the said Governor and Company. | The whole. |
| 37 Geo. 3, c. 46 | An Act for making certain annuities created by the Parliament of the kingdom of Ireland transferable, and the dividends thereon payable at the Bank of England; and for the better security of the proprietors of such annuities, and of the Governor and Company of the Bank of England. | Section three and all the subsequent sections. |
| 37 Geo. 3, c. 54 (I.) | An Act to enable the proprietors of debentures issued by government | Section eleven and all the sub- |

| References to Act | Title of Act. | Extent of Repeal. |
|--------------------------|--|---|
| 37 Geo. 3, c. 126 | to convert them into stock transferable at the Bank of Ireland. An Act to prevent the counterfeiting any copper coin in this realm made or to be made current by proclamation, or any foreign gold or silver coin; and to prevent the bringing into this realm or uttering any counterfeit foreign gold or silver coin. | sequent sections. The whole, both as to England and Scotland, except section one. |
| 38 Geo. 3, c. 53 (I.) | An Act for the more effectually preventing the forging of the notes and bills of the Governor and Company of the Bank of Ireland, and the circulation of forged notes and bills of the said Governor and Company. | The whole. |
| 39 Geo. 3, c. 63 (I.) | An Act for the more effectually preventing the forging of bills of exchange and promissory notes, or any acceptance, assignment, or indorsement thereof, or any acquittance or receipt for money or goods; and also for preventing the forging of the promissory notes of the Governor and Company of the Bank of England commonly called bank notes, and the bills of exchange of the said Governor and Company called bank post bills. | The whole, except the last section. |
| 40 Geo. 3, c. 96 (I.) | An Act to revive, amend, continue, or make perpetual certain temporary statutes. | So much of section five as perpetuates the part of the 27 Geo. 3, c. 15, hereby repealed. |
| 41 Geo. 3, c. 57 | An Act for the better prevention of the forgery of the notes and bills of exchange of persons carrying on the business of bankers. | The whole. |
| 43 Geo. 3, c. 139 | An Act for preventing the forging and counterfeiting of foreign bills of exchange, and of foreign promissory notes and orders for the payment of money; and for preventing the counterfeiting of foreign copper money. | Sections one and two as to Ireland, and the rest of the act as to the whole United Kingdom. |
| 48 Geo. 3, c. 1 | An Act for regulating the issuing and paying off of exchequer bills. | Section nine. |

| References to Act. | Title of Act. | Extent of Repeal. |
|--------------------------|---|---|
| 49 Geo. 3, c. 13 (I.) | An Act for the more effectually preventing the forging of bank notes, bank bills of exchange, and bank post bills, and the negotiation of forged and counterfeited bank notes, bank bills of exchange, and bank post bills of the Governor and Company of the Bank of Ireland. | The whole. |
| 1 Geo. 4, c. 4 | An Act for punishing criminally drivers of stage coaches and carriages for accidents occasioned by their wilful misconduct. | The whole. |
| 1 Geo. 4, c. 92 | An Act for the prevention of forging and counterfeiting of bank notes. | Sections one and two. |
| 3 Geo. 4, c. 116 | An Act for the more convenient and effectual registering in Ireland deeds executed in Great Britain. | So much of section seven as relates to any forging or counterfeiting therein mentioned. |
| 4 Geo. 4, c. 54 | An Act for allowing the benefit of clergy to persons convicted of certain felonies, under two Acts of the ninth year of King George the First and of the twenty-seventh year of King George the Second; for making better provision for the punishment of persons guilty of sending or delivering threatening letters; and of assaults with intent to commit robbery. | The whole. |
| 5 Geo. 4, c. 25 (I.) | An Act to repeal so much of an Act passed in the ninth year of the reign of King William the Third as relates to burials in suppressed monasteries, abbeys, or convents in Ireland; and to make further provision with respect to the burial in Ireland of persons dissenting from the Established Church. | Section five. |
| 7 Geo. 4, c. 64 | An Act for improving the administration of criminal justice in England. | Sections nine, ten, and eleven. |
| 7 & 8 Geo. 4, c. 18 | An Act to prohibit the setting spring guns, man traps, and other engines calculated to destroy human life or inflict grievous bodily harm. | The whole. |

| References to Act. | Title of Act. | Extent of Repeal. |
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| 7 & 8 Geo. 4, c. 29 | An Act for consolidating and amending the laws of England relative to larceny and other offences connected therewith. | The whole, as to the whole United Kingdom. |
| 7 & 8 Geo. 4, c. 30 | An Act for consolidating and amending the laws in England relative to malicious injuries to property. | The whole. |
| 9 Geo. 4, c. 31 | An Act for consolidating and amending the statutes in England relative to offences against the person. | The whole. |
| 9 Geo. 4, c. 54 (I.) | An Act for improving the administration of justice in criminal cases in Ireland. | Sections twenty-three, twenty-four, and twenty five. |
| 9 Geo. 4, c. 55 (I.) | An Act for consolidating and amending the laws in Ireland relative to larceny and other offences connected therewith. | The whole, as to the whole United Kingdom. |
| 9 Geo. 4, c. 56 (I.) | An Act for consolidating and amending the laws in Ireland relative to malicious injuries to property. | The whole. |
| 10 Geo. 4, c. 34 (I.) | An Act for consolidating and amending the statutes in Ireland relating to offences against the person. | The whole. |
| 11 Geo. 4 & 1 Will. 4, c. 66 | An Act for reducing into one Act all such forgeries as shall henceforth be punished with death, and for otherwise amending the laws relative to forgery. | The whole, except section twenty-one. |
| 2 & 3 Will. 4, c. 4 | An Act for more effectually preventing embezzlements by persons employed in the public service of his Majesty. | The whole. |
| 2 & 3 Will. 4, c. 34 | An Act for consolidating and amending the laws against offences relating to the coin. | The whole, as to the whole United Kingdom. |
| 2 & 3 Will. 4, c. 75 | An Act for regulating schools of anatomy. | Section sixteen. |
| 2 & 3 Will. 4, c. 123 | An Act for abolishing the punishment of death in certain cases of forgery. | The whole. |
| 3 & 4 Will. 4, c. 44 | An Act to repeal so much of two Acts of the seventh and eighth years and the ninth year of King George the Fourth as inflicts the punishment of death upon persons breaking, entering, and stealing in a dwelling-house; also for giving power to the judges to add to the punishment of transporta- | The whole. |

| References to Act. | Title of Act. | Extent of Repeal. |
|------------------------------|---|---|
| 4 & 5 Will. 4, c. 26 | tion for life in certain cases of forgery and in certain other cases. An Act to abolish the practice of hanging the bodies of criminals in chains. | Section two. |
| 5 & 6 Will. 4, c. 34 (I.) | An Act to amend two clerical errors contained in an Act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act for consolidating and amending the laws in Ireland relative to larceny and other offences connected therewith." | The whole. |
| 5 & 6 Will. 4, c. 81 | An Act for abolishing capital punishments in cases of letter stealing and sacrilege. | So much as relates to the punishment of any person whoshall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel shall break out of the same, and to principals in the second degree and accessories in such offences. |
| 6 & 7 Will. 4, c. 4 | An Act to amend the Act of the last session for abolishing capital punishments in cases of letter stealing and sacrilege. | So much as alters and amends that part of the 5 & 6 Will. 4, c. 81, which is hereby repealed. |
| 6 & 7 Will. 4, c. 30 | An Act to repeal so much of two Acts of the ninth and tenth years of King George the Fourth as directs the period of the execution and the prison discipline of persons convicted of the crime of murder. | The whole. |
| 6 & 7 Will. 4, c. 86 | An Act for registering births, deaths, and marriages in England. | Section forty-three. |
| 7 Will. 4 & 1 Vict. c. 77 | An Act to assimilate the practice of the Central Criminal Court to other courts of criminal judicature within the kingdom of England | So much of section three as empowers the court to direct |

| References to Act. | Title of Act. | Extent of Repeal. |
|------------------------------|---|---|
| 7 Will. 4 & 1 Vict. c. 84 | <p>and Wales with respect to offenders liable to the punishment of death.</p> <p>An Act to abolish the punishment of death in cases of forgery.</p> | <p>sentence of death to be recorded in cases of murder.</p> <p>So much of sections one and three as relates to the forging, altering, offering, uttering, disposing of, or putting off any will, testament, codicil, or testamentary writing, or any power of attorney, or other authority therein mentioned, and to principals in the second degree and accessories before the fact in such offences, and so much of sections two and three as relates to the punishment of any offence created by or formerly punishable under any enactment in this schedule before mentioned and hereby repealed.</p> |
| 7 Will. 4 & 1 Vict. c. 85 | An Act to amend the laws relating to offences against the person. | The whole. |
| 7 Will. 4 & 1 Vict. c. 86 | An Act to amend the laws relating to burglary and stealing in a dwelling house. | The whole. |
| 7 Will. 4 & 1 Vict. c. 87 | An Act to amend the laws relating to robbery and stealing from the person. | The whole. |
| 7 Will. 4 & 1 Vict. c. 89 | An Act to amend the laws relating to burning or destroying buildings and ships. | The whole. |

| References to Act. | Title of Act. | Extent of Repeal. |
|---------------------------|--|--|
| 7 Will. 4 & 1 Vict. c. 90 | An Act to amend the law relating to offences punishable by transportation for life. | The whole, except section five. |
| 2 & 3 Vict. c. 58 | An Act to make further provision for the administration of justice, and for improving the practice and proceedings in the Courts of the Stannaries of Cornwall, and for the prevention of frauds by workmen employed in the mines within the county of Cornwall. | Section ten. |
| 3 & 4 Vict. c. 97 | An Act for regulating railways ... | Section fifteen. |
| 4 & 5 Vict. c. 56 | An Act for taking away the punishment of death in certain cases, and substituting other punishments in lieu thereof. | Sections two and three, and so much of section one as relates to embezzlements by officers or servants of the Bank of England |
| 5 & 6 Vict. c. 28 (I.) | An Act to assimilate the law in Ireland as to the punishment of death to the law in England; to abolish the punishment of death in certain cases in Ireland, and to substitute other punishments in lieu thereof. | Sections four, thirteen, fourteen, and fifteen, and so much of section seven as alters the punishment contained in any enactment hereby repealed, and so much of section eighteen as relates to principals in the second degree and accessories before the fact to any offence mentioned in the said sections four, thirteen, fourteen and fifteen or in the said part of the said section eighteen hereby repealed. |
| 5 & 6 Vict. c. 39 | An Act to amend the law relating to advances <i>bonâ fide</i> made to agents intrusted with goods. | Section six. |

| References to Act. | Title of Act. | Extent of Repeal. |
|-----------------------------|---|-------------------------------|
| 5 & 6 Vict. c. 66 | An Act for further regulating the preparation and issue of exchequer bills. | Sections nine and ten. |
| 5 & 6 Vict. c. 106 (1.) | An Act to regulate the Irish fisheries. | Sections eleven and twelve. |
| 6 & 7 Vict. c. 10 | An Act for removing doubts as to the punishment which may be awarded under the provisions of an Act of the fourth and fifth years of Her present Majesty, "for taking away the punishment of death in certain cases," for certain offences therein specified. | The whole. |
| 7 & 8 Vict. c. 62 | An Act to amend the law as to burning farm buildings. | The whole. |
| 7 & 8 Vict. c. 81 (1.) | An Act for marriages in Ireland, and for registering such marriages. | Section seventy-five. |
| 8 & 9 Vict. c. 44 | An Act for the better protection of works of art and scientific and literary productions. | The whole. |
| 8 & 9 Vict. c. 47 | An Act for the further prevention of the offence of dog stealing. | The whole. |
| 8 & 9 Vict. c. 108 (1.) | An Act for the further amendment of an Act of the sixth year of Her present Majesty for regulating the Irish fisheries. | Section eighteen |
| 9 & 10 Vict. c. 25 | An Act for preventing malicious injuries to persons and property by fire or by explosive or destructive substances. | The whole. |
| 10 & 11 Vict. c. 66 | An Act for extending the provisions of the law respecting threatening letters and accusing parties with a view to extort money. | The whole. |
| 11 & 12 Vict. c. 46 | An Act for the removal of defects in the administration of criminal justice. | Sections one, two, and three. |
| 12 & 13 Vict. c. 11 | An Act to amend the laws of England and Ireland relative to larceny and other offences connected therewith. | The whole. |
| 12 & 13 Vict. c. 76 | An Act to protect women from fraudulent practices for procuring their defilement. | The whole. |
| 13 & 14 Vict. c. 72 (1.) | An Act to amend the laws for the registration of assurances of lands in Ireland. | Section sixty-two. |
| 13 & 14 Vict. c. 88 (1.) | An Act to amend the law relating to engines used in the rivers and on the sea-coasts of Ireland for the taking of fish. | Section forty-two. |

| References to Act. | Title of Act. | Extent of Repeal. |
|-----------------------------|--|--|
| 14 & 15 Vict. c. 11 | An Act for the better protection of persons under the care and control of others as apprentices or servants; and to enable the guardians and overseers of the poor to institute and conduct prosecutions in certain cases. | Sections one, two, six, and seven. |
| 14 & 15 Vict. c. 19 | An Act for the better prevention of offences. | Sections one, two, three, four, six, seven, eight, and nine. |
| 14 & 15 Vict. c. 92 (I.) | An Act to consolidate and amend the Acts relating to certain offences and other matters, as to which justices of the peace exercise summary jurisdiction in Ireland. | Sections two, three, four, and five. |
| 14 & 15 Vict. c. 100 | An Act for further improving the administration of criminal justice. | Sections four, six, eight, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, and so much of section five as relates to forging or uttering any instrument, and so much of section twenty-nine as relates to any indecent assault, or any assault occasioning actual bodily harm, or any attempt to have carnal knowledge of a girl under twelve years of age. |
| 16 & 17 Vict. c. 23 | An Act for redeeming or commuting the annuity payable to the South Sea Company, and certain annuities of three pounds per centum per annum, and for creating new annuities of three pounds ten shillings per centum per annum, and two pounds ten shillings per centum per annum, and issuing exchequer bonds. | Section forty-one. |

| References to Act. | Title of Act. | Extent of Repeal. |
|-------------------------|---|--|
| 16 & 17 Vict. c. 30 | An Act for the better prevention and punishment of aggravated assaults upon women and children, and for preventing delay and expense in the administration of certain parts of the criminal law. | Section one. |
| 16 & 17 Vict. c. 99 | An Act to substitute in certain cases other punishment in lieu of transportation. | Section twelve. |
| 16 & 17 Vict. c. 102 | An Act to prevent the defacing of the current coin of the realm. | The whole as to the whole United Kingdom. |
| 16 & 17 Vict. c. 113 | An Act to amend the procedure in the Superior Courts of Common Law in Ireland. | So much of section seventy-one as relates to any action which shall be commenced against any person for anything done in pursuance of any of the acts of this session for consolidating and amending the statute law of England and Ireland relating to larceny, malicious injuries, and coin. |
| 16 & 17 Vict. c. 132 | An Act to extend the provisions of an Act of the present session for redeeming or commuting the annuity payable to the South Sea Company and certain annuities of three pounds per centum per annum, and to provide for payments to be made under the said Act. | Sections ten and eleven. |
| 17 & 18 Vict. c. 33 | An Act to place public statutes within the Metropolitan Police District under the control of the Commissioners of Her Majesty's Works and Public Buildings. | Section six. |
| 20 & 21 Vict. c. 54 | An Act to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property. | The whole. |

| References to Act. | Title of Act. | Extent of Repeal. |
|-------------------------|--|----------------------|
| 21 & 22 Vict. c. 3 | An Act for enabling the East India Company to raise money in the United Kingdom for the service of the Government of India. | Section ten. |
| 21 & 22 Vict. c. 47 | An Act to amend the law of false pretences. | The whole. |
| 21 & 22 Vict. c. 79 | An Act to amend the law relating to cheques or drafts on bankers. | Section three. |
| 21 & 22 Vict. c. 106 | An Act for the better government of India. | Section fifty. |
| 22 Vict. c. 11 | An Act to enable the Secretary of State in Council of India to raise money in the United Kingdom for the service of the Government of India. | Section ten. |
| 22 & 23 Vict. c. 32 | An Act to amend the law concerning the police in counties and boroughs in England and Wales. | Section twenty-five. |
| 22 & 23 Vict. c. 39 | An Act to enable the Secretary of State in Council of India to raise money in the United Kingdom for the service of the Government of India. | Section thirteen. |
| 23 & 24 Vict. c. 8 | An Act to amend the law relating to the unlawful administering of poison. | The whole. |
| 23 & 24 Vict. c. 29 | An Act to amend an Act relative to malicious injuries to property. | The whole. |
| 23 & 24 Vict. c. 130 | An Act to enable the Secretary of State in Council of India to raise money in the United Kingdom for the service of the Government of India. | Section thirteen. |

III.

LARCENY, &c. ACT.

24 & 25 VICT. CAP. 96.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences.—[6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpreta-
tion of terms
"Document
of Title to
Goods."

1. In the interpretation of this act:

The term "Document of Title to Goods" shall include any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to:

"Document
of Title to
Lands."

The term "Document of Title to Lands" shall include any deed, map, paper, or parchment,

written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of any real estate :

The term "Trustee" shall mean a trustee on some express trust created by some deed, will, or instrument in writing,⁽¹⁾ and shall include the heir, or personal representative, of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present or future act relating to joint-stock companies, bankruptcy, or insolvency :

The term "Valuable Security" shall include any order, exchequer acquittance, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund whether of the United Kingdom, or of Great Britain

"Trustee."
"Valuable Security."

(1) In *Reg. v. Fletcher* (9 Cox Crim. Cas. 189; Leigh & Cave 180; 31 L. J. M. C. 206) it was held that the rules of a savings bank were an "instrument in writing" within this section.

In the above case the prisoner, who was trustee, treasurer, and secretary of a savings bank was indicted under the 20 & 21 Vict. c. 54, s. 1 ("An Act to make better Provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons entrusted with Property") for misappropriation as a trustee. As secretary he received the money deposited, which by the rules of the savings bank it was his duty to hand over to the treasurer, who was required by the Savings Bank Acts to pay it over when demanded to the trustees, whose duty, as defined by the rules, was to invest it in the public funds in the names of the Commissioners for the Reduction of the National Debt. The prisoner falsified and appropriated to his own purposes part of the money so deposited with him as secretary with intent to defraud. It was held that he was a *trustee of property for the benefit of some other person* within the meaning of the last-mentioned section.

or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and shall also include any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money or for payment of money, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state, and any document of title to lands or goods as hereinbefore defined :

“Property.”

The term “Property” shall include every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include, not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise :

“Night.”

For the purposes of this act, the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.

All larcenies
to be of the
same nature.

2. Every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the twenty-first day of June one thousand eight hundred and twenty-seven ; and every court whose power as to the trial of larceny was before that time limited to petty larceny shall have power to try every case of larceny, the punish-

ment of which cannot exceed the punishment hereinafter mentioned for simple larceny, and also to try all accessories to such larceny.⁽²⁾

⁽²⁾ *Continuous Act.*—By means of a secret junction pipe with the main, a mill was supplied with gas which did not pass through the metre, and which was consumed without being paid for. This continued to be done for some years. Held, on an indictment for stealing 1000 cubic feet of gas, that the entire evidence might be given, as there was one continuous act of stealing all the time: (*Reg. v. Firth*, 19 L. T. Rep. 746; Law Rep. 1 O. C. Res. 172.)

Stealing from a large quantity.—Prisoner was found with dead fowls in his possession, of which he could give no account, and was tracked to a fowl-house where a number of fowls were kept, and on the floor of which were some feathers corresponding with the feathers of one of the fowls on the prisoner, from the neck of which feathers had been removed. The fowl-house, which was closed over night, was found open in the morning. The spot where the prisoner was found was 1200 yards from the fowl-house, and the prosecutor, not knowing the number of fowls kept, could not swear that he had lost any. Held, that there was evidence to support a conviction for larceny: (*Reg. v. Mockford*, 17 L. T. Rep. 582.)

Influence of a threat.—Mock auction.—A woman went into a mock auction-room, where the prisoner pretended to act as auctioneer. Some cloth was put up by auction, for which a person in the room bid 25s. A man standing between the woman and the door said to the prisoner that she had bid 26s. for it, upon which the prisoner knocked it down to the woman. She said she had not bid for it, and would not pay for it, and turned to go out. The prisoner said she must pay for it before she would be allowed to go out, and she was prevented from going out. She then paid 26s. to the prisoner because she was afraid, and left with the cloth. Held, that these facts were sufficient to sustain a conviction for larceny: (*Reg. v. MacGrath*, 21 L. T. Rep. 543; 29 L. J. M. C. 7.)

Recent possession.—Presumption.—It is a presumption of fact, and not an implication of law from evidence of recent possession of stolen property unaccounted for, whether the offence of stealing or of feloniously receiving has been committed. Where an indictment contains counts for larceny and receiving, unless the evidence excludes the probability of one or the other offence having been committed, the case should be left to the jury on both counts: (*Reg. v. Langmead*, 10 L. T. Rep. 350.)

Young partridges.—Young partridges were reared from eggs by a common hen; they could fly a little, but still remained with the hen as her brood, and slept under her wings at night, and from their inability to escape were practically in the power and dominion of the prosecutor:

Bailees
fraudulently
converting

3.⁽³⁾ Whosoever being a bailee of any chattel, money or valuable security, shall fraudulently

Held, that they might be the subject of larceny: (*Reg. v. Shickle*, 19 L. T. Rep. 327; Law Rep. 1 C. C. Res. 158.)

Lost Property.—A. dropped a sovereign on a country road during the night time. She did not stop to look for it, but on the following morning she started to go to the spot in the hope of finding it. In the meantime the prisoner picked it up, and said to his companion, "It would just make his week up." Prisoner and his companion walked on and met A. on her way to the spot where she lost the sovereign. From what passed between A. and the prisoner and his companion, the fact that the prisoner had got A.'s sovereign was brought to the prisoner's knowledge; but he denied having found it. Subsequently he was taxed with having done so, but he would not admit it, equivocated, and declined to give it up. Held, on the authority of *Thurborn's case*, that the prisoner could not be convicted of larceny, as at the time the prisoner picked up the sovereign, intending to appropriate it to his own use, he did not know, and had not the means of knowing, who the owner was: (*Reg. v. Glyde*, 18 L. T. Rep. 613; Law Rep. 1 C. C. Res. 139.)

Finding—Withholding in hope of a reward.—One who in expectation of a reward withholds from the owner whom he knows a lost cheque received by him from the finder is not guilty of stealing the cheque: (*Reg. v. Gardner*, 7 L. T. Rep. 471; 32 L. J. M. C. 35.)

Larceny by an adulterer—Evidence of possession.—The prisoner, a servant of the prosecutor, eloped with the prosecutor's wife, and was found living with the wife in a room which they had occupied for two days. Some of the husband's property was found in a box belonging to the husband, locked, and of which the wife had the key, but a watch belonging to him was being worn by the prisoner. When taken, he said that the watch was the wife's, and that he had got it from her. Held, that upon this evidence, the jury were justified in convicting the prisoner of larceny: (*Reg. v. Mutters*, 11 L. T. Rep. 642; 34 L. J. M. C. 54.)

Attempt to commit a larceny.—In order to convict of an attempt to commit larceny, it must appear that there was property in the place where the attempt is made that could be stolen. Therefore, where a person put his hand into the pocket of another, with intent to steal, he cannot be convicted of an attempt to steal unless it appear that there was property in the pocket which might be stolen. It should be left to the jury to say whether there was any property in the pocket: (*Reg. v. Collins*, 10 L. T. Rep. 581; 33 L. J. M. C. 177.)

⁽³⁾ Very many decisions having been pronounced upon this section and the corresponding section in the repealed statute of the 20 & 21 Vict. c. 54, s. 4, it will be well here to refer to them.

take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction.

property
guilty of
larceny.

4.⁽⁴⁾ Whosoever shall be convicted of simple larceny, or of any felony hereby made punishable

Punishment
for simple
larceny.

A man cannot be convicted of larceny as bailee, unless the bailment was to redeliver the very same chattel or money: (*Reg. v. Hoare*, 1 Fos. & Fin. 647; *Reg. v. Garrett*, 2 Fos. & Fin. 14.) In *Reg. v. Hassell* (Leigh & Cave, 58) Cockburn, C. J., said: "The prisoner is indicted under the 4th section of the 20 & 21 Vict. c. 54, for larceny as a bailee. The word 'bailment' must there be understood in its legal acceptation, namely, a deposit of something to be returned in specie, and does not apply to the receipt of money with an obligation to return the amount where there is no obligation to return the identical coin."

To sustain a charge of larceny by a bailee it is necessary to prove some act of conversion inconsistent with the purposes of the bailment; where, therefore, the prisoner was indicted for larceny as the bailee of a coat, and the evidence was that the prosecutor had lent the coat to the prisoner to wear for a day, and that some few days afterwards the prisoner left the town and was found wearing the coat on board a vessel bound for Australia, Martin, B., stopped the case on the ground that there was no evidence of a conversion sufficient to satisfy the statute, saying, "the determination of the bailment must be something analogous to larceny, and some act must be done inconsistent with the purposes of the bailment:" (*Reg. v. Jackson*, 9 Cox Crim. Cas. 505.) See, also, *Reg. v. Weeks* (10 Cox Crim. Cas. 224.)

In *Reg. v. Bucknell* (9 Cox Crim. Cas. 778) and *Reg. v. Bunkall* (Leigh & Cave, 371), the prisoner was entrusted by the prosecutor with money to buy a load of coals, which were to be brought to the prosecutor by the prisoner in his own cart, the prisoner being paid for his services, including the use of his horse and cart. He bought a load of coal in his own name, and on the way to the prosecutor's he abstracted a portion of the coal and converted it to his own use, delivering the rest of the coal to the prosecutor as and for the whole load. This was held to constitute the offence of larceny by a bailee.

⁽⁴⁾ By sect. 2 of the 27 & 28 Vict. c. 47 (see the statute, *post*), five years' penal servitude is in all cases substituted as the minimum sentence in lieu of three years.

Solitary confinement.—By sect. 119 of the present statute it is enacted, that "whenever solitary confinement may

like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Three larcenies within six months may be charged in one indictment.

5.⁽⁵⁾ It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months, from the first to the last of such acts, and to proceed thereon for all or any of them.

Where a single taking is charged, and several

6. If upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one

be awarded for any indictable offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year."

Whipping.—By sect. 119 of the present statute it is enacted, that "whenever whipping may be awarded for any indictable offence under this act, the court may sentence the offender to be once privately whipped, and the number of strokes, and the instrument with which they shall be inflicted, shall be specified by the court in the sentence."

The 26 & 27 Vict. c. 103 ("An Act to amend the Law in certain Cases of Misappropriation by Servants of the Property of their Masters") makes important alterations in the cases of servants, contrary to the orders of their masters, taking from the possession of such masters food for the purpose of giving the same to any horse or other animal belonging to or in the possession of their masters. See the statute (*post*).

⁽⁵⁾ *Indictment for three larcenies.*—An indictment against a prisoner for three larcenies from the same prosecutor contained no averment that they were committed within a period of six months. Held, nevertheless, that the indictment was good: (*Reg v. Heywood*, 10 L. T. Rep. 464; 33 L. J. M. C. 133.)

time was taken at different times, the prosecutor shall not by reason thereof, be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six months elapsed between the first and the last of such takings; and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings.

takings at
different
times are
proved.

7.⁽⁶⁾ Whosoever shall commit the offence of simple larceny after a previous conviction for felony, whether such conviction shall have taken place upon an indictment, or under the provisions of the act passed in the session held in the eighteenth and nineteenth years of Queen Victoria, chapter one hundred and twenty-six, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Larceny,
after a
conviction
for felony.

8.⁽⁷⁾ Whosoever shall commit the offence of simple larceny, or any offence hereby made

Larceny,
after
conviction

(⁶) This section is a modification of sect. 11 of the 7 & 8 Geo. 4, c. 28, which provides for the punishment of offenders who commit felonies after a previous conviction for felony. The present enactment, it will be observed, is confined to the case of the commission of *simple larceny* after a previous conviction for felony; so that should the subsequent offence not be one of simple larceny, it cannot be dealt with under this section. (The 7 & 8 Geo. 4, c. 28, is not repealed.) See, as to penal servitude after a previous conviction, 27 & 28 Vict. c. 47 (*post*).

(⁷) Under the 7 & 8 Geo. 4, c. 28, s. 11, to warrant the charge of a previous conviction, such conviction must be

of an
indictable
misdemeanor
under
this act.

punishable like simple larceny, after having been previously convicted of any indictable misdemeanor punishable under this act, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Larceny,
after two
summary
convictions.

9. Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been twice summarily convicted of any of the offences punishable upon summary conviction, under the provisions contained in the act of the session held in the seventh and eighth years of King George the Fourth, chapter twenty-nine, or the act of the same session, chapter thirty, or the act of the ninth year of King George the Fourth, chapter fifty-five, or the act of the same year, chapter fifty-six, or the act of the session held in the tenth and eleventh years of Queen Victoria, chapter eighty-two, or the act of the session held in the eleventh and twelfth years of Queen Victoria, chapter fifty-nine, or in sections three, four, five, and six of the act of the session held in the fourteenth and fifteenth years of Queen Victoria,

7 & 8 Geo. 4,
c. 29, 30.

9 Geo. 4, cc.
55, 56.

10 & 11 Vict.
c. 82.

11 & 12 Vict.
c. 59.

14 & 15 Vict.
c. 92.

of some *felony*; the present section, however, renders this unnecessary, since the previous crime may now have been *any indictable misdemeanor* punishable under this act. It is remarkable that, whilst the Legislature were altering this head of the law, they did not extend the operation of these two last sections to certain *misdemeanors* committed after a previous conviction. Take, for instance, the misdemeanor of obtaining property by false pretences—that is an offence which may be punished by five years' penal servitude—and there seems no good reason why, upon a subsequent conviction for a similar offence, it should not be put upon the same footing as a larceny, and the offender be subject to seven years' penal servitude.

chapter ninety-two, or in this act, or the act of this session, intituled “An Act to consolidate and amend the Statute Law of England and Ireland relating to malicious Injuries to Property” (whether each of the convictions shall have been in respect of an offence of the same description or not, and whether such convictions or either of them shall have been or shall be before or after the passing of this act), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

24 & 25 Vict.
c. 97.

As to larceny of cattle or other animals :

10. Whosoever shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing
horses, cows,
sheep, &c.

11.⁽⁸⁾ Whosoever shall wilfully kill any animal,

Killing
animals

⁽⁸⁾ This is in substance a re-enactment of sect. 25 of the 7 & 8 Geo. 4, c. 29, so far as it relates to the wilfully killing of any of the cattle mentioned in the said section, with intent to steal the carcase, &c.; the words, however, are more general in the present section, comprising *any animal*, with this proviso, that the offence of *stealing* the animal so killed would have amounted to felony. This proviso exempts from the operation of the section the killing of a dog for the purposes before mentioned, since, by sect. 18, the stealing of a dog (second offence) is not a felony, but a misdemeanor.

with intent to steal the carcase, &c. with intent to steal the carcase, skin, or any part of the animal so killed, shall be guilty of felony. and being convicted thereof shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed would have amounted to felony.

Stealing deer in an uninclosed part of a forest.

Second offence.

12.⁽⁹⁾ Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the uninclosed part of any forest, chase, or purlieu, shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding fifty pounds, as to the justice shall seem meet; and whosoever having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or by any former act of Parliament, shall afterwards commit any of the offences hereinbefore enumerated, whether such second offence be of the same description as the first or not, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Stealing deer in any inclosed ground.

13. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land where deer shall be usually kept, shall be guilty of felony, and being convicted thereof shall be

⁽⁹⁾ For the mode of proceeding against any offender under this section, the application of the penalty, the right of appeal, &c., see sects. 105, 106, 107, 108, 109, 110, 112, and 120 (*post*).

liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

14. If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall be found in the possession of any person or on the premises of any person with his knowledge, and such person being taken, or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction by the justice, forfeit and pay any sum not exceeding twenty pounds; and if any such person shall not under the said provisions be liable to conviction, then, for the discovery of the party who actually killed or stole such deer, the justice, at his discretion, as the evidence given and the circumstances of the case shall require, may summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed; and if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as hereinbefore last mentioned.

Suspected persons found in possession of venison, &c., and not satisfactorily accounting for it.

Penalty in case they cannot be convicted, how the justice may proceed.

15. Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any

Setting engines for taking deer or pulling down park fences.

part of the fence of any land where any deer shall be then kept, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding twenty pounds, as to the justice shall seem meet.

Deer keepers, &c., may seize the guns, &c., of offenders who, on demand, do not deliver up the same.

16. If any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed lane where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person intrusted with the care of such deer, and any of his assistants, whether in his presence or not, may demand from every such offender any gun, fire-arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this act, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Penalty on resistance to keepers, &c., in the execution of their duty.

Killing, &c., hares or rabbits in a

17.⁽¹⁰⁾ Whosoever shall unlawfully and wilfully, between the expiration of the first hour after

⁽¹⁰⁾ This section is open to the objection that it does not direct what punishment is to be awarded for the offence of killing, &c., hares and rabbits in the night time. The old common law punishment, therefore, of fine or imprisonment would seem to be the appropriate punishment.

sunset and the beginning of the last hour before
 sunrise, take or kill any hare or rabbit in any
 warren or ground lawfully used for the breeding
 or keeping of hares or rabbits, whether the same
 be inclosed or not, shall be guilty of a misde-
 meanor; and whosoever shall unlawfully and wil-
 fully, between the beginning of the last hour
 before sunrise and the expiration of the first hour
 after sunset, take or kill any hare or rabbit in any
 such warren or ground, or shall at any time set or
 use therein any snare or engine for the taking of
 hares or rabbits, shall, on conviction thereof before
 a justice of the peace, forfeit and pay such sum of
 money, not exceeding five pounds, as to the justice
 shall seem meet; provided that nothing in this
 section contained shall affect any person taking or
 killing in the daytime any rabbits on any sea
 bank or river bank in the county of Lincoln, so
 far as the tide shall extend, or within one furlong
 of such bank.

warren in
 the night
 time.

The like in
 the daytime.

Exception.

18. Whosoever shall steal any dog shall, on
 conviction thereof before two justices of the peace,
 either be committed to the common gaol or house
 of correction, there to be imprisoned, or to be
 imprisoned and kept to hard labour, for any term
 not exceeding six months, or shall forfeit and pay,
 over and above the value of the said dog, such
 sum of money not exceeding twenty pounds, as to
 the said justices shall seem meet; and whosoever,
 having been convicted of any such offence, either
 against this or any former act of Parliament, shall
 afterwards steal any dog, shall be guilty of a mis-
 demeanor, and being convicted thereof shall be
 liable, at the discretion of the court, to be im-
 prisoned for any term not exceeding eighteen
 months, without or without hard labour.

Stealing
 dogs.

Second
 offence.

19. Whosoever shall unlawfully have in his
 possession or on his premises any stolen dog,
 or the skin of any stolen dog, knowing such dog

Possession
 of stolen
 dogs.

Second
offence.

to have been stolen or such skin to be the skin of a stolen dog, shall, on conviction thereof between two justices of the peace, be liable to pay such sum of money, not exceeding twenty pounds, as to such justices shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards be guilty of any such offence as in this section before mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour.

Taking
money to
restore dogs.

20. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour.

Stealing
beasts or
birds ordi-
narily kept
in confine-
ment, and
not the
subjects of
larceny.

21. Whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof, shall on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the bird, beast, or other animal, such sum of money not exceeding twenty pounds, as to the justice shall seem meet; and whosoever, having been convicted of any such

Second
offence.

offence, either against this or any former act of Parliament, shall afterwards commit any offence in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.

22. If any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof; and any person in whose possession or on whose premises such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof, shall be so found (such person knowing that the bird, beast, or animal has been stolen or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is the part of a stolen animal), shall, on conviction before a justice of the peace, be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment, as any person convicted of stealing any beast or bird is made liable to by the last preceding section.

Persons found in possession of stolen beasts, &c., liable to penalties.

23.⁽¹⁾ Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law, shall, on conviction before a justice of the peace, forfeit and pay, over and above the value of the bird, any sum not exceeding two pounds.

Killing pigeons.

⁽¹⁾ This provision does not apply to a case where a party under a claim of right kills a pigeon which is doing mischief upon his property: (*Taylor v. Newman*, 8 L. T. Rep. 424; 32 L. J. M. C. 186; 9 Cox Crim. Cas. 314.)

Taking fish
in any water
situate in
land belong-
ing to a
dwelling
house; in a
private
fishery
elsewhere.

Provision
respecting
anglers.

24.⁽¹²⁾ Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanor; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery,⁽¹³⁾ shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money not exceeding five pounds, as to the justice shall seem meet: provided that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first

⁽¹²⁾ This section is open to the objection that it does not define the punishment for the misdemeanor enacted in the first portion of the section; the offence therefore will be punishable as a misdemeanor at common law by fine and imprisonment or either.

⁽¹³⁾ When upon the hearing by justices of an information, a claim of right is set up by the defendant, such claim, if made *bonâ fide*, and with some show of reason, will oust their jurisdiction; and although it is for the justices to determine whether or not such claim of right is made *bonâ fide*, and with a show of reason, yet if they determine that it is not so made, the Court of Queen's Bench will review their determination, and overrule it if come to upon insufficient grounds: (*Reg. v. Stimpson and Peak*, 8 L. T. Rep. 526; 32 L. J. M. C. 208.) If, however, a claim of right is set up which cannot exist in law, then, notwithstanding it is made *bonâ fide*, the justices should disregard it: (*Hudson v. M'Rea*, 33 L. J. M. C. 65; 9 L. T. Rep. 678.)

mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds, and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds as to the justice shall seem meet; and if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill, or adjoining thereto.

Provision as to boundaries of parishes

25. If any person shall at any time be found fishing against the provisions of this act, the owner of the ground, water, or fishery where such offender shall be so found, his servant or any person authorised by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession, and in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner: provided, that any person angling against the provisions of this act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling.

The tackle of fishers may be seized.

Angler, on seizure of his tackle, exempt from penalty.

26. Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and whosoever shall unlawfully

Stealing or dredging for oysters in oyster fisheries.

Form of
indictment

Proviso as
to floating
fish.

and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three months, with or without hard labour, and with or without solitary confinement; and it shall be sufficient in any indictment to describe either by name or otherwise the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill: provided, that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only.

As to larceny of written instruments :

Bonds, bill
notes, &c.

27.⁽¹⁴⁾ Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, or obliterate,

⁽¹⁴⁾ In *Reg. v. Lowrie*, (36 L. J. M. C. 24; 10 Cox Crim. Cas. 388) the prisoner was convicted on an indictment under this section for stealing a "certain valuable security, to wit, an agreement between L. and C. whereby C. was entitled to receive payment of certain sums of money, and which said sums of money were then due and unsatisfied to C." It was proved that the sums were not due till some time after the stealing. Upon this it was held that since this section limits the term "valuable security" to securities "other than a document of title to lands," it is material in an indictment under this section to describe the valuable security, so as to show that it is within the section, and that the description ought to have been proved, and that since it had not been proved, the conviction could not be supported.

the whole or any part of any valuable security, other than a document of title to lands, shall be guilty of felony, of the same nature and in the same degree and punishable in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the securities so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned, or referred to in or by the security.

28. Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, obliterate, or conceal, the whole or any part of any document of title to lands shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and in any indictment for any such offence relating to any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest, whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof.

Deeds, &c.
relating to
real pro-
perty.

Form of
indictment.

29. Whosoever shall, either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal, the whole or any part of any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years—or to be

Wills or
codicils.

Other remedies
does not to
be affected,

imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person: provided, that nothing in this or the last preceding section mentioned, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any such offence might or would have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of any of the felonies in this and the last preceding section mentioned, by any evidence whatever, in respect of any act done by him, if he shall at any time previous to his being charged with such offence have first disclosed such act, on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

Stealing
records or
other legal
documents

30. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously cancel, obliterate, injure, or destroy the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or of any original document whatsoever of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending,

or terminated in any such court, or of any bill, petition, answer, interrogatory, deposition, affidavit, order, or decree, or of any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending or terminated in any such court, or of any original document in anywise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in any of Her Majesty's castles, palaces, or houses, or in any Government or public office, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person.

Form of
indictment.

As to larceny of things attached to or growing on land :

31. Whosoever shall steal, or shall rip, cut, sever, or break with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material or of both, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land being private property, or for a fence to any dwelling house, garden, or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and in the case of any such thing fixed in any such square, street, or place as aforesaid, it shall

Metal, glass,
wood, &c.,
fixed to
house or
land.

not be necessary to allege the same to be the property of any person.

Trees in
pleasure
grounds of
the value of
1*l*., or else-
where of the
value of 5*l*.

32. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing elsewhere than in any of the situations in this section before mentioned, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of five pounds), be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny.

Stealing
trees,
shrubs, &c.,
wheresoever
growing, and
of any value
above 1*s*.,
punishable
on summary
conviction
for first and
second
offence;
third
offence,
felony.

33. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever having been convicted of any such offence, either against

Second
offence.

this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit; and whosoever, having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this act), shall afterwards commit any of the offences in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Third
offence.

34. Whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour, for such term not exceeding twelve months as the convicting justice shall think fit.

Stealing, &c.,
any live or
dead fence,
wooden
fence, stile,
or gate.

Second
offence.

35. If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part

Suspected
persons in
possession

of wood, &c.,
not satisfac-
torily
accounting
for it.

of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of the value of one shilling at the least, shall be found in the possession of any person, or on the premises of any person, with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding two pounds.

Stealing, &c.,
any fruit or
vegetable
production
in a garden,
&c., punish-
able on sum-
mary con-
viction for
first offence.

36. Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hot-house, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet: and whosoever having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards commit any of the offences in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Second
offence,
felony.

Stealing, &c.
vegetable
productions
not growing
in gardens,
&c.

37. Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden,

orchard, pleasure ground, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding one month, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty shillings as to the justice shall seem meet, and in default of payment thereof, together with the costs (if ordered), shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made ; and whosoever, having been convicted of any offence either against this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour, for such term not exceeding six months as the convicting justice shall think fit.

Second
offence.

As to larceny from mines :

38. Whosoever shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Ore of metal,
coal, &c.

39. Whosoever, being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found or being in such

Miners re-
moving ore
with intent
to defraud.

mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to larceny from the person and other like offences:

Robbery or stealing from the person.

40. Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

On trial for robbery, jury may convict of an assault with intent to rob.

41. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

Assault with intent to rob.

42. Whosoever shall assault any person with

intent to rob shall be guilty of felony, and being convicted thereof shall (save and except in the cases where a greater punishment is provided by this act) be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

43. Whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob, any person, or shall, together with one or more other person or persons, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Robbery or assault by a person armed, or by two or more, or robbery and wounding.

44. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Letter, demanding money, &c., with menaces.

Demanding
money, &c.,
with
menaces, or
by force,
with intent
to steal.

45.⁽¹⁵⁾ Whosoever shall with menaces or by force demand any property, chattel, money, valuable security, or other valuable thing of any person, with intent to steal the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Letter
threatening
to accuse of
crime with
intent to
extort.

46. ⁽¹⁶⁾ Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to

⁽¹⁵⁾ In *Reg. v. Robertson* (11 L. T. Rep. 387; 34 L. J. M. C. 35) the prisoner was indicted and convicted under this section for demanding money with menaces with intent to steal the same. It was proved that the prosecutor having spoken to a female in the street at night, the prisoner, a policeman, came up and told him that he had been talking to a prostitute, and that he must go with him to Bridewell, and that he, the prosecutor, was under a penalty of one pound and costs for talking to a prostitute in the streets, but that if he would give him five shillings, he might go about his business. The prosecutor thereupon gave him four shillings and sixpence. Upon this it was held that the conviction was right. Under this section the menace must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and take away from his acts that element of free voluntary action which alone constitutes consent. It is a question for the jury whether the evidence in any particular case comes within that principle: (*Reg. v. Walton*, 9 Cox Crim. Cas. 268; 32 L. J. M. C. 79.)

⁽¹⁶⁾ Upon an indictment with three counts, for three separate letters, it was proposed to prove the sending of all three. It was held, however, that the evidence of the sending of only one was admissible: (*Reg. v. Ward*, 10 Cox Crim. Cas. 42. Byles, J.)

extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing, from any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping; and the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this act.

"Infamous
Crime"
defined.

47.(17) Whosoever shall accuse or threaten to accuse, either the person to whom such accusation or threat shall be made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being

Accusing or
threatening
to accuse
with intent
to extort.

(17) On the trial of an indictment for threatening to accuse of an infamous crime, in order to extort money, the guilt or innocence of the party threatened is quite immaterial. Therefore, although the prosecutor may be cross-examined with a view to show that he is really guilty of the offence imputed to him, yet no evidence will be allowed to be given even in cross-examination by another witness to prove that the prosecutor is really guilty: (*Reg. v. Cracknell*, 10 Cox Crim. Cas. 408. Willes, J.)

convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

Inducing a person by violence or threats to execute deeds, &c., with intent to defraud.

48. Whosoever, with intent to defraud or injure any other person, shall, by any unlawful violence to or restraint of, or threat or violence to or restraint of, the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime as hereinbefore defined, compel or induce any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

It shall be immaterial from whom the menaces proceed.

49. It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury, or accusation to be caused or made by the offender or by any other person.

As to sacrilege, burglary, and house-breaking :

Breaking and entering a church or chapel and

50. Whosoever shall break and enter any church, chapel, meeting house, or other place of Divine worship, and commit any felony therein,

or being in any church, chapel, meeting house, or other place of Divine worship shall commit any felony therein and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

51. Whosoever shall enter the dwelling house of another with intent to commit any felony therein, or being in such dwelling house shall commit any felony therein, and shall in either case break out of the said dwelling house in the night, shall be deemed guilty of burglary.

52. Whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

53. No building, although within the same curtilage with any dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for any of the purposes of this act, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other.

54.⁽¹⁸⁾ Whosoever shall enter any dwelling house in the night with intent to commit any

⁽¹⁸⁾ *Not necessary to specify the goods.*—In an indictment for attempting to steal goods and chattels in a dwelling-house it is not necessary to specify the goods: (*Reg. v. Johnson and another*, 11 L. T. Rep. 389; 34 L. J. M. C. 24.)

night with intent to commit any felony.

felony therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Breaking into any building within the curtilage which is no part of the dwelling house and committing any felony.

55. Whosoever shall break and enter any building, and commit any felony therein, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, or being in any such building shall commit any felony therein, and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Breaking into any house, shop, warehouse, &c., and committing any felony.

56. Whosoever shall break and enter any dwelling house, schoolhouse, shop, warehouse, or counting house, and commit any felony therein, or, being in any dwelling house, schoolhouse, shop, warehouse, or counting house, shall commit any felony therein, and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

House-breaking, &c., with intent to com-

57. Whosoever shall break and enter any dwelling house, church, chapel, meeting house, or other place of Divine worship, or any building

within the curtilage, schoolhouse, shop, warehouse, or counting house, with intent to commit any felony therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

mit any
felony.

58.⁽¹⁹⁾ Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock, key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the

Being armed
with intent
to break and
enter any
house in the
night.

(¹⁹) To support a conviction under this section it is necessary that the person should be proved to have the intent of breaking into, or entering some particular building, and proof of a general intent to break into houses will be insufficient. The indictment must, as in burglary, allege the ownership and situation of the premises intended to be broken into: (*Reg. v. Jarrold*, 32 L. J. M. C. 258; 9 Cox Crim. Cas. 307; *Leigh & Cave*, 301.)

Possession of implements — Possession by one.—Where several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of housebreaking implements, all may be found guilty of the misdemeanor of being found by night in possession of implements of housebreaking without lawful excuse, for the possession of one is in such case the possession of all: (*Reg. v. Thompson*, 21 L. T. Rep. 397.)

court, to be kept in penal servitude for the term of three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

The like
after a
previous
conviction
for felony,
&c.

59. Whosoever shall be convicted of any such misdemeanor as in the last preceding section mentioned, committed after a previous conviction, either for felony or such misdemeanor, shall on such subsequent conviction be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

As to larceny in the house :

Stealing in a
dwelling
house to the
value of 5*l*.

60. Whosoever shall steal in any dwelling house any chattel, money, or valuable security, to the value in the whole of five pounds or more, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing in a
dwelling
house with
menaces.

61. Whosoever shall steal any chattel, money, or valuable security in any dwelling house, and shall by any menace or threat put any one being therein in bodily fear, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to larceny in manufactories :

Stealing
goods in

62. Whosoever shall steal, to the value of ten shillings, any woollen, linen, hempen, or cotton

yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

process of
manufac-
ture.

As to larceny in ships, wharfs, &c. :

63. Whosoever shall steal any goods or merchandise in any vessel, barge, or boat of any description whatsoever in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or shall steal any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing
from ships
docks,
wharfs, &c

64. Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding

Stealing
from ship in
distress or
wrecked.

fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and the offender may be indicted and tried either in the county or place in which the offence shall have been committed or in any county or place next adjoining.

Persons in possession of shipwrecked goods not giving a satisfactory account.

65. If any goods, merchandise, or articles of any kind belonging to any ship or vessel in distress or wrecked, stranded, or cast on shore, shall be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender shall, on conviction of such offence before the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money not exceeding twenty pounds as to the justice shall seem meet.

If any person offers shipwrecked goods for sale the goods may be seized, &c.

66. If any person shall offer or expose for sale any goods, merchandise, or articles whatsoever, which shall have been unlawfully taken, or shall be reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure to some justice of the peace; and if the person who shall have

offered or exposed the same for sale, being summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandise, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender shall, on conviction of such offence by the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money not exceeding twenty pounds as to the justice shall seem meet.

As to larceny or embezzlement by clerks, servants, or persons in the public service :

67.⁽²⁰⁾ Whosoever, being a clerk or servant, or being employed for the purpose or in the capa-

Larceny by clerks or servants.

⁽²⁰⁾ *Servant fraudulently accounting for money entrusted to him for payment.*—A servant's duty was to give out materials to be wrought up and pay the workmen when the work was finished, and for this purpose he received cash from his masters, and at the end of each week he accounted to them for sums so received and paid. The cash was kept by him, but he was not authorised to apply the money in any other way. He paid C. 13s. and fraudulently charged his employers as having paid 14s. 8d., and appropriated the 1s. 8d. to his own use. Held, that this amounted to larceny : (*Reg. v. Low*, 13 L. T. Rep. 642.)

Servant appropriating money to his own use.—Money was given to the prisoner for the purpose of paying turnpike tolls at two gates on his journey. Twelve days afterwards, on being asked if he had paid the toll at one of the gates, he said he had not—that he had gone by a parish road, which only crossed the road at the gate, and so no toll was payable there, and that he had spent the money on beer for himself and his mates. The prisoner having been convicted of larceny of the money, but it not appearing on a case reserved as to whether the facts proved a larceny,

city of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Embezzle-
ment by
clerks or
servants.

68.(21) Whosoever, being a clerk or servant, or being employed for the purpose or in the

that the question of felonious intent had been distinctly left to the jury, the court quashed the conviction. (*Reg. v. Deering*, 20 L. T. Rep. 680.)

(21) Under this section it was held that where A. agreed to engage B. as agent, or traveller, for the sale of coals, at a salary of one guinea per week, and one shilling per ton, as commission on coals sold, and sixpence per ton on coals sold to dealers procured by B. as customers, and B. agreed to collect all moneys in connection with his orders, the commission not to be due until the money was received by A., and moneys received by B. not to be kept more than one week in his hands; that B. was a clerk, or servant.

But it was also held in the same case, that where, after B. had been in A.'s service about a year, B. being desirous of selling coals by retail on his own account, A. agreed to supply him with coals, and then made the following alteration in their agreement,—“As you are now going into the retail coal trade on your own account, we think it best to have a proper understanding, and in future we pay you a commission only. your salary will be stopped from this date; there is a large amount against you, and we request you to get it in,”—that under this new agreement B. was not a clerk, or servant. (*Reg. v. Bowers*, 15 Cox Crim. Cas. 250; 35 L. J. M. C. 206.)

A commission agent not a clerk or servant.—The prisoner was employed by a coal merchant under an agreement “that he was to receive 1s. per ton procuration fee, payable out of the first payment, 4 per cent. for collecting, and 3d. on the last payment. Collections to be paid on Friday evening before five p.m.; on Saturday before two p.m.” He received no salary, was not obliged to be at the office except on Friday or Saturday, to account for what money he had received. He was at liberty to go where he pleased for orders. Held, that the prisoner was not a clerk or

capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security,

servant within the statute: (*Reg. v. Marshall*, 21 L. T. Rep. 796.)

The prisoner agreed with the prosecutor, a manufacturer of earthenware, to act as his traveller, and "diligently employ himself by going from town to town in England, Ireland, and Scotland, and soliciting orders for the printed and decorated earthenware, manufactured by" the prosecutor, and that he would not, without the consent in writing of the prosecutor, "take or execute any order for vending or disposing of any goods of the nature or kind aforesaid for or on account of himself or any other person." It was further agreed that the prisoner should be paid by commission, and should render weekly accounts. The prosecutor subsequently gave the prisoner written permission to take orders for two other manufacturers. The prisoner being indicted under the 68th section: Held, that he was a "clerk or servant" of the prosecutor within the meaning of the section: (*Reg. v. Turner*, 22 L. T. Rep. 278.)

Who not a clerk or servant.—The treasurer of a friendly society, under the 18 & 19 Vict., c. 63, into whose hands the moneys received on behalf of the society were to be paid, and who was to pay no money except by an order signed by the secretary, and countersigned by the chairman or a trustee, and who, by the statute, was bound to render an account to the trustees, and pay over the balance on such accounting when required, is not a clerk or servant, and cannot be indicted for embezzlement of such balance: (*Reg. v. Tyrie*, 19 L. T. Rep. 657; 1 Law Rep. C. C. Res. 177.)

Benefit building society—Secretary.—The trustees of a benefit building society borrowed money for the purposes of their society on their individual responsibility (there being no rule of the society authorising them to borrow money.) The money on one occasion was received by the secretary and embezzled by him. Held, that the secretary might be charged with embezzlement as the servant of W. and others, W. being one of the trustees, and a member of the society: (*Reg. v. Redford*, 21 L. T. Rep. 508.)

Assistant overseer.—An assistant overseer of the poor, appointed by the inhabitants of a parish in vestry assembled, by virtue of the 59 Geo. 3, c. 12, s. 7, is properly described in an indictment for embezzlement of moneys collected by him for poor-rate, as the servant of the inhabitants of the parish. (*Reg. v. Carpenter*, 14 L. T. Rep. 572; 35 L. J. M. C. 169.)

County court bailiff.—A county court bailiff was indicted for embezzling moneys of the prosecutor, the high bailiff. The moneys embezzled were received on levies under county court processes. Held, that the charge could not be sustained, as the relation of master and servant did not

which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male, under the age of sixteen years, with or without whipping.

Larceny by
persons in
the Queen's
service, or
by the police

69. Whosoever, being employed in the public service of Her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, shall steal any chattel, money, or valuable security belonging to or in the possession or power of Her Majesty, or intrusted to or received

exist between the bailiff and the high-bailiff, nor was the bailiff bound to pay over the moneys to him: (*Reg. v. Glover*, 10 L. T. Rep. 582; 33 L. J. M. C. 169.)

Trades union—Embezzlement of funds by its officers.—An unregistered friendly society or trades union may prosecute its servants for embezzlement of its property, though some of its rules may be void as being in restraint of trade, and contrary to public policy: (*Reg. v. Stainer*, 21 L. T. Rep. 758.)

Money—Cheque not converted.—An indictment for embezzling money under sects. 67 and 68 is not proved by showing merely that the prisoner embezzled a cheque without evidence that he has converted the cheque into money: (*Reg. v. Keena*, 17 L. T. Rep. 515; Law Rep. 1 C. C. Res., 113.)

The 31 & 32 Vict. c. 116 ("An Act to amend the Law relating to Larceny and Embezzlement") greatly extends the law upon this subject by including members of a co-partnership: (see the statute, *post*.)

or taken into possession by him by virtue of his employment, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

70. Whosoever, being employed in the public service of Her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place, whatsoever, and intrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, shall embezzle any chattel, money, or valuable security, which shall be intrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever except for the public service, shall be deemed to have feloniously stolen the same from Her Majesty, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour; and every offender against this or the last preceding section may be dealt with, indicted, tried, and punished either in the county or place in which he shall be apprehended or be in custody, or in which he shall have committed the offence; and in every case of larceny, embezzlement, or fraudulent application or disposition of any chattel, money, or valuable security in this and the last preceding section mentioned, it shall be lawful in the warrant of commitment by the

Embezzlement by persons in the Queen's service, or by the police

Venue.

Form of warrant of commitment and indictment.

justice of the peace before whom the offender shall be charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money, or valuable security in Her Majesty.

Distinct acts
of embezzle-
ment may be
charged in
the same
indictment.

71. For preventing difficulties in the prosecution of offenders in any case of embezzlement, fraudulent application or disposition, hereinbefore mentioned, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, which may have been committed by him against Her Majesty or against the same master or employer, within the space of six months from the first to the last of such acts; and in every such indictment where the offence shall relate to any money or any valuable security it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly.

Persons
indicted for
embezzle-
ment as a

72. If upon the trial of any person indicted for embezzlement, or fraudulent application or disposition as aforesaid, it shall be proved that he

took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, or fraudulent application or disposition, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, or as a person employed in the public service, or in the police, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, or fraudulent application or disposition as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, or fraudulent application or disposition, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, fraudulent application or disposition; and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition, or embezzlement, upon the same facts.

clerk, &c.,
not to be
acquitted if
the offence
turn out to
be larceny;
and *vice*
versâ.

73.⁽²²⁾ Whosoever, being an officer or servant of the Governor and Company of the Bank of England or of the Bank of Ireland, and being intrusted with any bond, deed, note, bill, dividend

Embezzle-
ment by
officers of
the Bank of
England or
Ireland.

⁽²²⁾ This section is more comprehensive than the 12th section of the 15 Geo. 2, c. 13.

warrant, or warrant for payment of any annuity or interest, or money, or with any security, money, or other effects of or belonging to the said Governor and Company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity, or interest, or money, or any security, money, or other effects of any other person, body politic or corporate, lodged or deposited with the said Governor and Company, or with him as an officer or servant of the said Governor and Company, shall secrete, embezzle, or run away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects as aforesaid, or any part thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to larceny by tenants or lodgers :

Tenant or
lodger steal-
ing chattel
or fixture let
to hire with
house or
lodgings.

74. Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband, or by any person on behalf of him or her or her husband, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping, and, in case the value of such chattel or fixtures shall exceed the sum of five pounds, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not

exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping; and in every case of stealing any chattel in this section mentioned it shall be lawful to prefer an indictment in the common form as for larceny, and in every case of stealing any fixture in this section mentioned to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

As to frauds by agents, bankers, or factors :

75. Whosoever, having been intrusted, either solely, or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof respectively; and whosoever, having been intrusted either solely, or jointly with any other person as banker, merchant, broker, attorney, or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company, or society, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith, and contrary to

Agent,
banker, &c.,
embezzling
money or
selling
securities,
&c., intrusted
to him :

or goods,
&c., intrusted
to him for
safe custody.

the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, to sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; but nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession upon which he shall have any lien, claim, or demand entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.

Punishment.

Not to affect trustees or mortgagees;

nor bankers, &c., receiving money due on securities;

or disposing of securities on which they have a lien.

Bankers, &c. fraudulently

76. Whosoever, being a banker, merchant, broker, attorney, or agent, and being intrusted,

either solely, or jointly with any other person, with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

selling, &c.,
property
intrusted to
their care.

77. Whosoever, being intrusted, either solely, or jointly with any other person, with any power of attorney for the sale or transfer of any property, shall fraudulently sell or transfer or otherwise convert the same or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

Persons
under
powers of
attorney
fraudulently
selling
property.

78. Whosoever, being a factor or agent intrusted, either solely, or jointly with any other person, for the purpose of sale or otherwise, with the possession of any goods, or of any document of title to goods, shall, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as in this section before mentioned, as and by way of a pledge, lien, or security for any money or valuable security borrowed or received by such factor or agent at or before the time of

Factors
obtaining
advances on
the property
of their
principals.

making such consignment, deposit, transfer, or delivery, or intended to be thereafter borrowed or received, or shall, contrary to or without such authority, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, accept any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer, or deliver any such goods or document of title, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned; and every clerk and other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer, or delivery, or in accepting or procuring such advance as aforesaid, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the same punishments: provided, that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring, or delivering any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer, or delivery was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent.

Clerks
wilfully
assisting.

Cases excepted where the pledge does not exceed the amount of their lien.

Definitions
of terms:
"intrusted:"

79. Any factor or agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods or obtained by reason of such factor or agent having been intrusted with the possession of the goods, or of any other document of title

thereto, shall be deemed to have been intrusted with the possession of the goods represented by such document of title; and every contract "pledge:" pledging or giving a lien upon such document of title as aforesaid shall be deemed to be a pledge of and lien upon the goods to which the same relates; and such factor or agent shall be deemed "possessed:" to be possessed of such goods or document, whether the same shall be in his actual custody, or shall be held by any other person subject to his control, or for him or on his behalf; and where any loan or advance shall be *bonâ fide* made to "Advance:" any factor or agent intrusted with and in possession of any such goods or document of title, on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title, and such goods or document of title shall actually be received by the person making such loan or advance, without notice that such factor or agent was not authorised to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or document of title within the meaning of the last preceding section, though such goods or document of title shall not actually be received by the person making such loan or advance till the period subsequent thereto; and any contract or agreement, "Contract or agreement:" whether made direct with such factor or agent, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such factor or agent; and any payment made, "Advance:" whether by money or bill of exchange or other negotiable security, shall be deemed to be an advance within the meaning of the last preceding section; and a factor or agent in possession as aforesaid of such goods or document shall be taken, for the purposes of the last preceding section, to have been intrusted therewith by the owner thereof, unless the contrary be shown in evidence. Possession to be evidence of intrusting.

Trustees
fraudulently
disposing of
property,
guilty of a
misdemeanor.

80. Whosoever, being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned: provided, that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of Her Majesty's Attorney-General, or, in case that office be vacant, of Her Majesty's Solicitor-General: provided also, that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending.

No prosecution shall be commenced without the sanction of some judge or the Attorney-General.

Directors,
&c., of any
body corporate or public company fraudulently appropriating property;

81. Whosoever, being a director, member, or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

82. Whosoever, being a director, public officer, or manager of any body corporate, or public company, shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

or keeping
fraudulent
accounts;

83. Whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of account or other document, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

or wilfully
destroying
books, &c.;

84. Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive and defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of

or publish-
ing fraudu-
lent state-
ments.

a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

No person to be exempt from answering questions in any court, but no person making a disclosure in any compulsory proceeding to be liable to prosecution.

85. Nothing in any of the last ten preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

No remedy at law or in equity shall be affected.

86. Nothing in any of the last eleven preceding sections of this act contained, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen, or impeach any remedy at law, or in equity, which any party aggrieved by any offence against any of the said sections might have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration

Convictions shall not be received in evidence in civil suits.

or repayment of any trust property misappropriated.

87. No misdemeanor against any of the last twelve preceding sections of this act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

Certain misdemeanors not triable at sessions.

As to obtaining money, &c., by false pretences :

88.⁽²³⁾ Whosoever shall by any false pretence obtain from any other person any chattel, money,

False pretences.

(23) False pretence, or larceny.—It was the duty of the prisoner, a clerk, to pay dock dues upon goods exported by his master, and, upon ascertaining the amount required upon each day's export before paying it to obtain the sum from his master's cash-keeper. The prisoner knowing that 1*l.* 3*s.* only was due on one of those days, fraudulently represented to the cash-keeper that a larger sum was due, and having obtained that, he paid the 1*l.* 3*s.* and appropriated the difference. Upon this it was held that although the evidence would have been sufficient to support an indictment for false pretences, he was not guilty of larceny: (*Reg. v. Thompson*, 7 L. T. Rep. 393; 32 L. J. M. C. 57.)

Existing fact—Promise.—Money was obtained by the prisoner from an unmarried woman, on the false representation that he was a single man, and that he would furnish a house with the money, and would then marry her. Upon this it was held that the false representation of an existing fact (that he was a single man) was sufficient to support a conviction for false pretences, although the money was obtained by that representation, united with the promise to furnish a house and then marry her: (*Reg. v. Jennison*, 6 L. T. Rep. 256; 33 L. J. M. C. 146.)

False pretence—A promise.—The prosecutor lent 10*l.* to the prisoner on the false pretence that he was going to pay his rent, and if the prisoner had not told him that he was going to pay his rent, the prosecutor would not have lent the money. Held, that this was not a false pretence of an existing fact to warrant a conviction: (*Reg. v. Lee*, 8 L. T. Rep. 437.)

False statement of existing fact.—An indictment charged that the prisoner did falsely pretend to A. that she (the prisoner) had power to bring back A.'s husband to her. The evidence was that A. met a woman, and conversed with her, and in consequence of that A. went to the prisoner and asked her to tell her a few words by the cards to fetch her husband back. The prisoner then asked what money the prosecutrix had, and obtained from her some

or valuable security, with intent to defraud, shall be guilty of a misdemeanor, and being convicted

money and a dress. The prisoner said that she could bring A.'s husband back over hedges and ditches with the stuff she had to work upon. Held, first, that the indictment charged a false pretence of an existing fact, and was good: Secondly, that the evidence was sufficient, connecting it together, to show that the money was parted with in consequence of the false pretence, and not antecedently to the making of it: (*Reg. v. Giles*, 11 L. T. Rep. 643; 34 L. J. M. C. 50.)

Representation of a trade mark.—A false representation that a stamp on a watch was the hall mark of the Goldsmith's Company, and that the number 18, part thereof, indicated that the watch was made of eighteen-carat gold, is an indictable offence, and is not the less so because accompanied by a representation that the watch was a gold one, and some gold was proved to have been contained in its composition: (*Reg. v. Suter and another*, 17 L. T. Rep. 177.)

Notes of a bank which has stopped.—The defendant knowing that some old country bank notes had been taken by his uncle forty years before, and that the bank had stopped payment, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know. The man passed the notes, and the defendant obtained value for them. Held, that the defendant was guilty of obtaining money by false pretences; also, that the bankruptcy proceedings need not be proved: (*Reg. v. Dowey*, 17 L. T. Rep. 481; 37 L. J., M. C. 52.)

Representation that goods were unincumbered.—The prosecutor lent money to the prisoner at interest on the security of a bill of sale on furniture, a promissory note of prisoner and another person, and a declaration made by the prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person, but not to its full value. Held, that there was evidence to go to the jury in support of a charge of obtaining money by false pretences: (*Reg. v. Meakin*, 20 L. T. Rep. 544.)

Pretending to carry on a business.—The prisoner obtained a sum of money from the prosecutor by pretending that he carried on an extensive business as an auctioneer and house agent, and that he wanted a clerk, and that the money was to be deposited as security for the prosecutor's honesty as such clerk. The jury found that the prisoner was not carrying on any such business at all. Held, that this was an indictable false pretence: (*Reg. v. Crabb*, 18 L. T. Rep. 370.)

Article not in existence.—It is no objection to an indictment for false pretences, that the thing obtained was not in

thereof shall be liable at the discretion of the court, to be kept in pénal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement : provided, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor ; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts : provided also, that it shall be sufficient in any indictment for obtaining or attempting to

No acquittal because the offence amounts to larceny.

Form of indictment and evidence.

existence at the time of making the false pretence, provided that the false pretence continued, and the thing when made was delivered under the influence thereof: (*Reg. v. Martin*, 15 L. T. Rep. 541 ; L. Rep. 1 Cr. Cas. Res. 56.)

Indictment — Particularity — Evidence. — The indictment charged that the prisoners falsely pretended that two loads of soot which they then delivered weighed 1 ton 17 cwt., whereas they weighed but 1 ton 13 cwt. by means of which false pretences they obtained 8s. The evidence was that a contract existed between the prosecutor and the prisoners for soot which prosecutor was to buy at the rate of 38s. per ton. Deliveries were made from time to time and payment was made according to the quantities so pretended to be delivered. The prisoners put broken bricks and slack amongst the soot in their cart, and went to a public weighing machine and got the whole weighed, and a ticket of such weight given. Afterwards the bricks and slack were removed, and the cart with the soot in it taken to the prosecutor and the soot delivered and the tickets presented, and payment made by the prosecutor according to the weights specified in the tickets. Held, that the indictment was sufficiently specific in form, and that the prisoners were indictable for obtaining money by false pretences: (*Reg. v. Lee and another*, 10 L. T. Rep. 348.)

Evidence of the acts of an accomplice.—An indictment charged K. and W. with falsely pretending to B. that they had a quantity of tobacco which they proposed to sell, and did sell to him, and thereby obtained money from him. The evidence was that K. and another person P. acting together were the chief parties by whom the false pretences were made. Held, that the acts of P. were the acts of K. and admissible against him upon the indictment: (*Reg. v. Kerrigan*, 9 L. T. Rep. 843 ; 33 L. J. M. C. 71.),

obtain any such property by false pretences to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money, or valuable security; and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.

Where any money or thing is caused to be paid or delivered to any person other than the person making a false pretence.

89. Whosoever shall by any false pretence cause or procure any money to be paid, or any chattel, or valuable security, to be delivered to any other person, for the use or benefit or on account of the person making such false pretence, or of any other person, with intent to defraud, shall be deemed to have obtained such money, chattel, or valuable security within the meaning of the last preceding section.

Inducing persons by fraud to execute deeds and other instruments.

90. Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, indorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to receiving stolen goods :

91. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice ; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, —or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping : provided, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Receiving,
where the
principal is
guilty of
felony

92.⁽²⁴⁾ In any indictment containing a charge

Indictment
for stealing

⁽²⁴⁾ It is worthy of observation, that this section, which is a re-enactment of sect. 3 of the 11 & 12 Vict. c. 46, does not adopt the language of the 91st section of the present act, for we find that it is only in an indictment containing a charge of feloniously *stealing any property* that it shall be lawful to add a count or several counts for feloniously receiving the same, or any part or parts thereof, knowing the same *to have been stolen* ; so that if the principal offence be not a stealing, but a felonious taking, extorting, embezzling, or otherwise disposing of any chattel, money, valuable security, or other property, there can be no count for receiving, such receiving being by the section required to be of the property, “knowing the same to have been *stolen*.” It may perhaps be suggested that feloniously “taking, extorting, embezzling, or otherwise disposing,” is of itself a *stealing* ; but, if so,

and receiving.

of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen, and in any indictment for feloniously receiving any property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property, or of receiving the same, or any part or parts thereof, knowing the same to have been stolen; and if such indictment shall have been preferred and found against two or more persons it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen.

wherefore this enumeration in sect. 91? If the word "stealing" be sufficient in sect. 92, wherefore was it deemed to be insufficient in sect. 91?

Husband and wife—Felonious receiving.—A husband and wife were jointly indicted for stealing and receiving, and the jury found the wife guilty of stealing, without any constraint on the husband's part, and the husband guilty of receiving the stolen property, knowing at the time when the property was delivered to him that it had been stolen by his wife: Held, that the husband was properly convicted of receiving: (*Reg. v. McAthey*, 7 L. T. Rep. 433; 32 L. J. M. C. 35.)

Receiving from a receiver.—If A. in the absence of B. feloniously receives stolen property from the thief and subsequently delivers it to C. who knowingly receives it, both may be jointly indicted for feloniously receiving it under sect. 93 and 94: (*Re Rearden*, 14 L. T. Rep. 449.)

93. Whenever any property whatsoever shall have been stolen, taken, extorted, obtained, embezzled, or otherwise disposed of in such a manner as to amount to a felony, either at common law or by virtue of this act, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

Separate receivers may be included in the same indictment in the absence of the principal

94. If upon the trial of any two or more persons indicted for jointly receiving any property it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict, upon such indictment, such of the said persons as shall be proved to have received any part or parts of such property.

On an indictment for jointly receiving, persons may be convicted of separately receiving.

95. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of, shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without

Receiving, where the principal has been guilty of a misdemeanor.

solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Receiver
where
triable.

96. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted, or disposed of, may, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county or place where he actually received such property.

Receivers of
property,
where the
original
offence is
punishable
on summary
conviction.

97. Where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this act made liable.

Principals in
the second
degree and
accessories.

98. In case of every felony punishable under this act every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except only a receiver of stolen

property) shall, on conviction, be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement ; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be indicted and punished as a principal offender.

Abettors in
misde-
meanors.

99. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable.

Abettors in
offences
punishable
on summary
conviction.

As to restitution and recovery of stolen property :

100. If any person guilty of any such felony or misdemeanor as is mentioned in this act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative ; and in every case in this section aforesaid the court before whom any person shall be tried for any such felony or misdemeanor shall have power to award from time to time writs of restitution. for the said property, or to order the restitution thereof in a summary manner : pro-

The owner
of stolen
property
prosecuting
thief or
receiver to
conviction
shall have
restitution
of his pro-
perty.

Provision as to valuable and negotiable securities.

vided, that if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the court shall not award or order the restitution of such security: provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanor against this act.

Not to apply to prosecutions of trustees, bankers, &c.

Taking a reward for helping to the recovery of stolen property without bringing the offender to trial.

101. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever which shall by any felony or misdemeanor have been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, as in this act before mentioned, shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of eighteen years, with or without whipping.

Advertising a reward for

102. Whosoever shall publicly advertise a

reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt, to be recovered, with full costs of suit.

the return
of stolen
property, &c.

As to apprehension of offenders, and other proceedings :

103. Any person found committing any offence punishable, either upon indictment or upon summary conviction by virtue of this act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law ; and if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods ; and any person to whom any pro-

A person in the act of committing any offence may be apprehended without a warrant.

A justice, upon good grounds of suspicion proved on oath, may grant a search warrant.

Any person to whom

stolen property is offered may seize the party offering it.

property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorised, and, if in his power, is required to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

A person loitering at night and suspected of any felony against this act may be apprehended.

104. Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place, during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony, against this act, and shall take such person, as soon as reasonably may be, before a justice of the peace, to be dealt with according to law.

Mode of compelling the appearance of persons punishable on summary conviction.

105. Where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this act, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode), the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant, and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

106. Every sum of money which shall be forfeited on any summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person: provided, that where several persons shall join in the commission of the same offence, and shall upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

Application of forfeitures and penalties on summary convictions.

Proviso where several persons join in commission of same offence.

107.⁽²⁵⁾ In every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint,

If a person summarily convicted shall not pay, &c., the justice may commit him.

Scale of imprisonment.

⁽²⁵⁾ The 28 & 29 Vict. c. 127 ("The Small Penalties Act, 1865.") contains provisions limiting the alternative punishment of imprisonment upon a graduated scale: (see the statute, *post.*)

the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds, and for any term not exceeding four months, where the amount, with costs, shall not exceed ten pounds, and for any term not exceeding six months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

Justice may discharge the offender in certain cases.

108. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

A summary conviction shall be a bar to any other proceeding for the same cause.

109. In case any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the Crown, or from the Lord Lieutenant or other chief governor in Ireland, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

110.⁽²⁶⁾ In all cases where the sum adjudged Appeal. to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen; provided, that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognisance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or if such appeal shall be against any conviction, whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction

⁽²⁶⁾ This appeal clause contains a novel and a very important feature in connection with appealing in cases where the appeal is against a conviction, whereby only a penalty or other sum of money shall be adjudged to be paid, namely, the depositing by the appellant with the clerk of the convicting justice of such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal. Thus, in such a case, instead either of remaining in prison or of entering into a recognisance with sureties, the appellant may deposit a sum of money sufficient to cover the penalty and the estimated costs of the conviction and the appeal.

and the costs of the appeal; and upon such notice being given, and such recognisance being entered into, or such deposit being made, the justice before whom such recognisance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid the clerk of the peace, or other proper officer, shall forthwith endorse on the conviction a memorandum that the same has been so quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

No cer-
tiorari, &c.

111. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of

form, or be removed by *certiorari* into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

112. Every justice of the peace before whom any person shall be convicted of any offence against this act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Conviction to be returned to the quarter sessions.

113.⁽²⁷⁾ All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after

Venue, in proceeding against persons acting under this act.

⁽²⁷⁾ *Notice of action—Larceny Act.*—To entitle a defendant to notice of action under the 24 & 25 Vict. c. 96, it is not sufficient that he should have a mere suspicion that the plaintiff had been attempting to commit a crime, but he must honestly believe that he was found committing such an offence as is mentioned in the statute. The defendant was disturbed at night by a noise which he ascribed to some person trying his back door. He shouted "Thieves," from his bedroom window, and when he got down to his front door he found the plaintiff collared by a policeman, and he immediately gave him into custody. Held, in an action for false imprisonment, that these circumstances were not sufficient to entitle the defendant to notice of action: (*Neate v. Hart*, 18 L. T. Rep 292.)

Notice of
action.

General
issue, &c.

the fact committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action.

As to other matters :

Stealers of
property in
one part of
the United
Kingdom
who have
the same in
any other
part of the
United
Kingdom

114.⁽²⁸⁾ If any person shall have in his possession in any one part of the United Kingdom any chattel, money, valuable security, or other property whatsoever, which he shall have stolen or otherwise feloniously taken in any other part of the United Kingdom, he may be dealt with, indicted, tried, and punished for larceny or theft in

⁽²⁸⁾ *Transmission of property.*—A watch was stolen in Liverpool, and sent with other things by railway to a receiver in Middlesex. Held, that the thief was triable in Middlesex, although there was no evidence that he had left Liverpool: (*Reg. v. Rogers and others*, 18 L. T. Rep. 414; L. Rep. 1 Cr. Cas. Res. 136.)

that part of the United Kingdom where he shall so have such property, in the same manner as if he had actually stolen or taken it in that part; and if any person in any one part of the United Kingdom shall receive or have any chattel, money, valuable security, or other property whatsoever which shall have been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing such property to have been stolen or otherwise feloniously taken, he may be dealt with, indicted, tried, and punished for such offence in that part of the United Kingdom where he shall so receive or have such property, in the same manner as if it had been originally stolen or taken in that part.

may be tried and punished in that part of the United Kingdom where they have the property.

115. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in which the offender shall be apprehended or be in custody; and in any indictment for any such offence or for being an accessory to any such offence the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's land or naval forces.

Offences committed within the jurisdiction of the Admiralty.

116. (29) In any indictment for any offence punishable under this act, and committed after a previous

Form of indictment for a

(29) This section effects a great alteration in the practice with reference to proceedings upon an indictment charging

subsequent
offence.

conviction or convictions for any felony, misdemeanor, or offence or offences punishable upon summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place or at certain times and places convicted of felony, or of an indictable misdemeanor, or of an offence or offences punishable upon summary conviction (as the case may be), without otherwise describing the previous felony, misdemeanor, offence or offences; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, or a copy of any such summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or to which such sum-

a former conviction. Although under the old law, the jury were not charged in the first instance to inquire as to the previous conviction, and therefore were supposed to know nothing of it, yet as the prisoner was arraigned in open court upon the whole indictment, the jury had an ample opportunity of knowing it, and thus they were likely to come to the consideration of the charge with minds much biassed against the accused. The present section now provides a course of proceeding which will, to a great extent, accomplish the object desired of keeping from the jury a knowledge of the previous conviction, until they have found the accused guilty upon the principal charge. It is still however to be regretted that the section does not go further and provide against the public announcement made by the clerk of assize, or clerk of the peace, upon a bill being returned by the grand jury of "a true bill against A. B. for felony after a previous conviction," since such an announcement of such previous conviction is in no way needful for any purposes of public justice.

It will be observed that this portion of the section applies to "any indictment," that is, whether preferred under this statute or not.

It will also be observed, that whilst the 7 & 8 Geo. 4, c. 28, and the 6 & 7 Will. 4, c. 111 (which provide for charging a previous conviction) are unrepealed, sects. 7, 8, and 9 of the present enactment contain new provisions with reference to the punishment which may be inflicted upon a conviction for simple larceny after a previous conviction.

mary conviction shall have been returned, or by the deputy of such clerk or officer (for which certificate or copy a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed the same; and the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; (that is to say,) the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted the court may proceed to sentence him accordingly, but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry: provided, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or convictions at

When the previous conviction is to be proved on the trial.

the same time that they inquire concerning such subsequent offence.

Fine and
sureties for
keeping the

117.⁽³⁰⁾ Whenever any person shall be convicted of any indictable misdemeanor punishable

⁽³⁰⁾ This section contains new and very extensive powers, and it may be well questioned whether, when a criminal has suffered his appointed punishment, it is judicious to impose upon him the further inconvenience of providing bondsmen for his future good behaviour (a thing which his position will in almost all cases preclude him from doing), and suffering a long term of imprisonment in case of failure. A wrongdoer ought to be fully punished for his offence, and he ought, and the public ought, to learn from the judge's own mouth what his punishment is to be, but he should be punished for his offence alone, and that punishment ought not to be uncertain, or to be made to depend upon whether or not the object of it has friends who will be responsible for his future conduct. By the operation of the section a man may actually be kept in prison a whole year, merely because he is friendless.

The clause also is open to the objection, that it is somewhat loosely or carelessly drawn. It could hardly have been intended that, in all cases where the court imposes the condition of finding sureties for keeping the peace and being of good behaviour, the party should be incarcerated for the long period of *twelve months* in default of his doing so; and yet there are no words giving any power to limit such imprisonment; and it may be asked, was it intended that such imprisonment should be without hard labour? Clearly the section says nothing about hard labour, and we apprehend therefore that it cannot be imposed.

It will be observed, that the section makes a distinction between misdemeanors and felonies. In the case of a conviction for a *misdemeanor*, the court may either in addition to or in lieu of any other punishment fine the offender, and require him to enter into his own recognisances, and to find sureties both or either for keeping the peace and being of good behaviour, so that if so disposed the court can in any such case dispense with punishment altogether, merely calling upon the offender to enter into his own recognisances to keep the peace and be of good behaviour.

As regards the imposition of a fine, the section is silent as to what is to be done in the event of its not being paid. No alternative punishment of imprisonment, with or without hard labour, for any time whatever, is directed in default of payment. It is difficult therefore to understand how this power to fine is to be rendered effective. Suppose the court to impose a fine, we apprehend it will have no right to impose the condition of imprisonment for any time until it is paid.

From the peculiar wording of the section it would seem,

under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorised, fine the offender, and require him to enter into his own recognisances and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act the court may, if it shall think fit, require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorised: provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

peace; in
what cases.

118. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Hard labour.

119. Whenever solitary confinement may be awarded for any indictable offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one

Solitary
confinement
and whip-
ping.

that when the court imposes a fine, it must also require the offender to enter into recognisances, and that it has no power to fine alone.

As regards a conviction for any *felony* under the act, the court has no power to impose a fine either in addition to or in lieu of any other punishment; but it may require the offender to enter into his own recognisances, and to find sureties both or either for keeping the peace (not for good behaviour) in addition to any other punishment.

The very loose way in which this section is drawn is the more to be regretted inasmuch as it is repeated in precisely the same form in the Malicious Injuries Act (24 & 25 Vict. c. 97, s. 73); the Forgery Act (24 & 25 Vict. c. 98, s. 51); the Coinage Act (24 & 25 Vict. c. 99, s. 38); and the Offences against the Person Act (24 & 25 Vict. c. 100, s. 71).

year; and whenever whipping may be awarded for any indictable offence under this act, the court may sentence the offender to be once privately whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence.

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;

except in London and the Metropolitan Police District.

120. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided, that nothing in this act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable upon summary conviction within the City of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

The costs of the prosecution of mis-

121.⁽³¹⁾ The court before which any indictable misdemeanor against this act shall be prosecuted

⁽³¹⁾ The 29 & 30 Vict. c. 52 ("An Act to extend the Law relating to the Expenses of Prosecutions, and to make Provision for Expenses on Charges of Felony, and certain Misdemeanors before examining Magistrates") extends the law as to granting costs: (see the statute, *post.*) See, also, 30 & 31 Vict. c. 35 (statute, *post.*)

or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

122. Nothing in this act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

demeanors
against this
act may be
allowed.
Act not to
extend to
Scotland.

123. This act shall commence and take effect on the first day of November one thousand eight hundred and sixty-one.

Commence-
ment of act.

IV.

MALICIOUS INJURIES TO PROPERTY
ACT.

24 & 25 VICT. CAP. 97.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Malicious Injuries to Property.—[6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Injuries by Fire to Buildings, and Goods therein.

Setting fire
to a church
or chapel.

1. Whosoever shall unlawfully and maliciously set fire to any church, chapel, meeting house, or other place of Divine worship, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to a dwelling
house, any

2. Whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being

therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

person being therein.

3.⁽¹⁾ Whosoever shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop oast, barn, storehouse, granary, hovel, shed, or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, whether the same shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire to a house, outhouse, manufactory, farm building, &c

4. Whosoever shall unlawfully and maliciously set fire to any station, engine house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude

Setting fire to any railway station.

(1) Under this section it was held that where the defendants had made a fire in several places on the floor of an unfinished building intended to be used when finished as a dwelling house, they could not be convicted upon counts charging the setting fire to a house: (*Reg. v. Edgell and others*, 11 Cox Crim. Cas. 132. Lush, J.)

for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to any public
building.

5. Whosoever shall unlawfully and maliciously set fire to any building other than such as are in this act before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to other
buildings.

6. Whosoever shall unlawfully and maliciously set fire to any building other than such as are in this act before mentioned shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to goods in
any building
the setting
fire to which
is felony.

7. Whosoever shall unlawfully and maliciously set fire to any matter or thing, being in, against, or under any building, under such circumstances that if the building were thereby set fire to the offence would amount to felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal

servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

8. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, or any matter or thing in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Attempting to set fire to buildings.

Injuries by explosive Substances to Buildings and Goods therein.

9. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling house, any person being therein, or of any building whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying or damaging a house with gunpowder, any person being therein.

10. Whosoever shall unlawfully and maliciously place or throw in, into, upon, under, against, or near any building any gunpowder or other explosive

Attempting to destroy buildings with gunpowder.

substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods or chattels, shall, whether or not any explosion take place, and whether or not any damage be caused, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injuries to Buildings by Rioters, &c.

Rioters
demolishing
church,
building, &c.

11. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish, or pull down or destroy, or begin to demolish, pull down, or destroy, any church, chapel, meeting house, or other place of Divine worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or movable, prepared for or employed in any manufacture or in any branch thereof, or any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection used

in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

12. If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force injure or damage any such church, chapel, meeting house, place of Divine worship, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, staith, bridge, waggonway, or trunk, as is in the last preceding section mentioned, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour: provided, that if upon the trial of any person for any felony in the last preceding section mentioned the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly.

Rioters
injuring
building,
machinery,
&c.

Injuries to Buildings by Tenants.

13. Whosoever, being possessed of any dwelling house or other building, or part of any dwelling house or other building held for any term of

Tenants of
houses, &c.,
maliciously
injuring
them.

years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish, the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling house or building, or part of such dwelling house or building, shall be guilty of a misdemeanor.

Injuries to Manufactures, Machinery, &c.

Destroying
goods in
process of
manufac-
ture, certain
machinery,
&c.

14. Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or article of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, or shall unlawfully or maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or movable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in

penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

15.⁽²⁾ Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any machine or engine, whether fixed or movable, used or intended to be used for sowing, reaping, mowing, threshing, ploughing, or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or movable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any

Destroying machines in other manufactures, threshing machines, &c.

(2) Every indictment for felony, whether it be a felony at common law or by statute, must allege that the act which forms the subject matter of the indictment was done "feloniously;" where, therefore, upon an indictment under this section the allegation was that the defendant "did unlawfully and maliciously damage with intent to destroy certain machines," omitting to allege that it was done "feloniously," it was held that the indictment was bad: (*Reg. v. Gray, Leigh & Cave*, 365; 9 Cox Crim. Cas. 417; 33 L. J. M. C. 78.)

Damaging machine with intent to render it useless.—The working parts of a steam threshing machine were designedly screwed too tight, which prevented it from working; and the plug of the pump was designedly taken out, and replaced with the wrong side up, so that no water could pass from the pump to the boiler; and the pipe leading from the plug to the boiler was stopped up by a piece of stick, and the machine was thus rendered temporarily useless and exposed to danger. But when the working parts of the engine were loosened, the plug properly replaced, and the stick taken from the pipe, the engine was as good as before these acts were done. Held, that these acts constituted damage to the machine within the fifteenth section of the 24 & 25 Vict. c. 97: (*Reg. v. Fisher*, 13 L. T. Rep. 380; 35 L. J. M. C. 57.)

framework-knitted piece, stocking, hose, or lace), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injuries to Corn, Trees, and vegetable Productions.

Setting fire
to crops of
corn, &c.

16. Whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, where-soever the same may be growing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to stacks of
corn, &c.

17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or with-

out hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

18. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned, under such circumstances that if the same were thereby set fire to the offender would be, under either of such sections, guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Attempting to set fire to any crops of corn, &c. or to any stack or steer.

19. Whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying hopbinds.

20. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house (in case the

Destroying or damaging trees, shrubs, &c. to the value of more than 1*l.* growing in a pleasure ground, &c.

amount of the injury done shall exceed the sum of one pound), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying
or damaging
trees,
shrubs, &c.
to the value
of more than
5*l.* growing
elsewhere
than in a
pleasure
ground, &c.

21. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing elsewhere than in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining to or belonging to any dwelling house (in case the amount of injury done shall exceed the sum of five pounds), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Damaging
trees,
wheresoever
growing, to
the amount
of 1*s.*

22. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of one shilling at the least, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding five

pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve months, as the convicting justice shall think fit; and whosoever, having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this act), shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Second
offence.

Third
offence.

23. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall after-

Destroying
any fruit or
vegetable
production
in a garden.

Second
offence.

wards commit any of the said offences in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying,
&c. vegetable pro-
ductions not
growing in
gardens, &c.

24. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty shillings as to the justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made; and whosoever, having been convicted of any such offence either against this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding six months as the convicting justice shall think fit.

Second
offence:

Injuries to Fences.

25. Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, for the first offence forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.

Destroying,
&c. any
fence, wall,
stile, or gate.

Second
offence.

Injuries to Mines.

26. Whosoever shall unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral fuel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to a coal
mine.

27. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any mine, under such circumstances that if the mine were thereby set fire to the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude

Attempting
to set fire to
a mine.

for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Conveying
water into
mine,
obstructing
the shaft, &c.

28. Whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall with the like intent unlawfully and maliciously pull down, fill up, or obstruct or damage, with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft of or belonging to any mine, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping: provided that this provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working.

Damaging
steam
engines,
staiths,
waggon-
ways, &c.
for working
mines.

29. Whosoever shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or render useless, any steam engine, or other engine for sinking, draining, ventilating, or working, or for in anywise assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connection with any such steam or other engine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-

way or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state, or shall unlawfully and maliciously stop, obstruct, or hinder the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine, or to hinder, obstruct, or delay the working thereof, or shall unlawfully and maliciously wholly or partially cut through, sever, break, or unfasten, or damage with intent to destroy or render useless, any rope, chain, or tackle, of whatsoever material the same shall be made, used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to or connected with or employed in any mine or the working or business thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, —or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

*Injuries to Sea and River Banks, and to Works
on Rivers, Canals, &c.*

30. Whosoever shall unlawfully and maliciously break down or cut down or otherwise damage or destroy any sea bank or sea wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be or shall be in danger of being overflowed or damaged, or shall unlawfully and maliciously throw, break, or cut down, level, undermine, or otherwise destroy, any quay, wharf, jetty, lock, sluice, floodgate, weir,

Destroying
any sea
bank, or wall
on any canal

tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Removing the piles of any sea bank, &c., or doing any damage to obstruct the navigation of a river or canal.

31. Whosoever shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank, or sea wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or shall unlawfully and maliciously open or draw up any flood-gate or sluice, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injuries to Ponds.

Breaking down the dam of a fishery, &c., or mill dam, or poisoning fish.

32. Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond, or of any water which shall be private

property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool, shall be guilty of misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injuries to Bridges, Viaducts, and Toll Bars.

33. Whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct, any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injury to a
public
bridge.

Destroying a
turnpike
gate, toll
house, &c.

34. Whosoever shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate or toll bar, or any wall, chain, rail, post, bar or other fence belonging to any turnpike gate or toll bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act of Parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, shall be guilty of a misdemeanor.

Injuries to Railway Carriages and Telegraphs.

Placing
wood, &c.,
on railway
with intent
to obstruct
or overthrow
any engine,
&c.

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway, any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove any signal or light, upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and if a male under the age of sixteen, with or without whipping.

Obstructing
engines or
carriages on
railways.

36. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any

railway, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour: provided that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the justice, either be committed to the common goal or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

Injuries to
electric or
magnetic
telegraphs.

38. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of cor-

Attempt to
injure such
telegraphs.

rection, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

Injuries to Works of Art.

Destroying
or damaging
works of art
in museums,
churches,
&c., or in
public places

39. Whosoever shall unlawfully and maliciously destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which museum, gallery, cabinet, library, or other repository is either at all times or from time to time open for the admission of the public, or of any considerable number of persons to view the same, either by the permission of the proprietor thereof or by the payment of money before entering the same, or any picture, statue, monument, or other memorial of the dead, painted glass, or other ornament, or work of art, in any church, chapel, meeting house, or other place of Divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or to any university, or college or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping: provided that nothing herein contained shall be deemed to affect the right of any person to recover, by action at law, damages for the injury so committed.

Injuries to Cattle and other Animals.

40.⁽³⁾ Whosoever shall unlawfully and maliciously kill, maim, or wound any cattle shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Killing or
maiming
cattle.

41. Whosoever shall unlawfully and maliciously kill, maim, or wound any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever having been convicted of any such offence shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not

Killing or
maiming
other
animals.

Second
offence.

⁽³⁾ Upon an indictment under this section for wounding a gelding, the prisoner was convicted upon evidence which showed that the gelding had suffered a laceration of the roots of the tongue, which protruded, and a tearing of the mouth, which injuries might have been caused by a pull of the tongue by the hand, but there was no evidence to show that any other instrument than the hand had been used. Held that there was sufficient evidence of a wounding, and the conviction was affirmed: (*Reg. v. Bullock*, 37 L. J. M. C. 47; Law Rep. 1 Crim. Cas. 115; 17 L. T. Rep. 516.)

exceeding twelve months as the convicting justice shall think fit.

Setting fire
to a ship.

42. Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire
to ships to
prejudice
the owner
or under-
writers.

43. Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Attempting
to set fire to
a vessel.

44. Whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel, under such circumstances that if the ship or vessel were thereby set fire to, cast away, or destroyed, the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be

liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

45. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Placing gunpowder near a vessel with intent to damage it.

46. Whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Damaging ships otherwise than by fire.

47. Whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully

Exhibiting false signals, &c.

exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is hereinbefore provided, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Removing or
concealing
buoys and
other sea
marks.

48. Whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall unlawfully and maliciously do any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall in any other manner unlawfully and maliciously injure or conceal any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying
wrecks or
any articles
belonging
thereto.

49. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of

the court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Sending Letters threatening to burn or destroy.

50. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, or straw, or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Sending letters threatening to burn or destroy houses, buildings, ships, &c.

Injuries not before provided for.

51.⁽⁴⁾ Whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any

Persons committing malicious injuries not before provided for exceeding the amount of 5l.

⁽⁴⁾ Under this section evidence of damage committed at several times in the aggregate, but not at any one time exceeding 5*l.*, will not sustain an indictment: (*Reg. v. Williams*, 9 Cox Crim. Cas. 338, Ir.)

term not exceeding two years, with or without hard labour; and in case any such offence shall be committed between the hours of nine of the clock in the evening and six of the clock in the next morning, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years and not less than three, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Persons committing damage to any property, in any case not previously provided for, may be committed or fined, and compelled by a justice to pay compensation not exceeding 5*l*.

52. Whosoever shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof before a justice of the peace at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding two months, or else shall forfeit and pay such sum of money not exceeding five pounds as to the justice shall seem meet, and also such further sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury, or spoil so committed, not exceeding the sum of five pounds; which last-mentioned sum of money shall, in the case of private property, be paid to the party aggrieved; and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in the same manner as every penalty imposed by a justice of the peace under this act; and if such sums of money, together with costs (if ordered), shall not be paid either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint, the justice may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be

Application of the money awarded.

imprisoned and kept to hard labour, as the justice shall think fit, for any term not exceeding two months, unless such sums and costs be sooner paid: provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this act had not passed.

Not to extend to certain cases herein named.

53. The provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided.

Preceding section to extend to trees.

Making Gunpowder to commit Offences, and searching for the same.

54. Whosoever shall make or manufacture, or knowingly have in his possession, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent thereby or by means thereof to commit, or for the purpose of enabling any other person to commit, any of the felonies in this act mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Making or having gunpowder, &c., with intent to commit any felony against this act.

55. Any justice of the peace of any county or place in which any machine, engine, implement, or thing, or any gunpowder or other explosive, dangerous, or noxious substance, is suspected to be made, kept, or carried for the purpose of

Justices may issue warrants for searching houses, &c., for such gunpowder, &c.

being used in committing any of the felonies in this act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching in the daytime any house, mill, magazine, store-house, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, waggon, cart, ship, boat, or vessel, in which the same is suspected to be made, kept, or carried for such purpose as hereinbefore mentioned; and every person acting in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining every such machine, engine, implement, and thing, and all such gunpowder, explosive, dangerous, or noxious substances found upon such search, which he shall have good cause to suspect to be intended to be used in committing any such offence, and the barrels, packages, cases, and other receptacles in which the same shall be, the same powers and protections which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by the act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled “An Act to amend the Law concerning the making, keeping, and carriage of Gunpowder and Compositions of an explosive Nature, and concerning the manufacture, sale, and use of Fireworks.”

Other Matters.

**Principals
in the second
degree and
accessories.**

56. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall on conviction be liable, at the discretion of the court, to be im-

prisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Abettors in misdemeanors.

57. Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this act, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

A person loitering at night, and suspected of any felony against this act may be apprehended.

58. Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Malice against owner of property unnecessary.

59. Every provision of this act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

Provisions of this act shall apply to persons in possession of the property injured

60. It shall be sufficient in any indictment for any offence against this act, where it shall be necessary to allege an intent to injure or defraud, to allege that the party accused did the act with intent to injure or defraud (as the case may be), without alleging an intent to injure or defraud

Intent to injure or defraud particular persons need not be stated in any indictment.

any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud (as the case may be).

Persons in the act of committing any offence may be apprehended without a warrant.

61. Any person found committing any offence against this act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

Mode of compelling the appearance of persons punishable on summary conviction.

62. Where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this act, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode,) the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant; and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

Abettors in offences punishable on summary conviction.

63. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either

for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable.

64. Every sum of money which shall be forfeited for the amount of any injury done shall be assessed in each case by the convicting justice, and shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no directions for the payment thereof to any person: provided that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

Application of forfeitures and penalties upon summary conviction.

Proviso where several persons join in commission of same offence.

65. In every case of a summary conviction under this act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice

If a person summarily convicted shall not pay, &c., the justice may commit him.

shall, at the time of the conviction, appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or "house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds; and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds; and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

The justice may discharge the offender in certain cases

66. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

A summary conviction shall be a bar to any other proceeding for the same cause.

67. When any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction; or shall have received a remission thereof from the Crown, or the Lord Lieutenant or other chief governor of Ireland, or shall have suffered the imprisonment awarded for nonpayment thereof, or the imprisonment awarded in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, he shall be released from all further or other proceedings for the same cause.

Appeal.

68. In all cases where the sum adjudged to be

paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction, for the county or place wherein the cause of complaint shall have arisen ; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognisance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded ; or if such appeal shall be against any conviction whereby only a penalty or sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal ; and upon such notice being given, and such recognisance being entered into, or such deposit being made, the justice before whom such recognisance shall be entered into, or such deposit shall be made, shall liberate such person if in custody ; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be

punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer shall forthwith indorse on the conviction a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

No certiorari.
&c.

69. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions
to be
returned to
the quarter
sessions.

70. Every justice of the peace before whom any person shall be convicted of any offence against this act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by

the proper officer among the records of the court ; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

How far
evidence in
future cases.

71. All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise ; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action ; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon ; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant ; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases ; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action.

Venue in
proceedings
against
persons
acting under
this act.

Notice of
action.

General
issue, &c.

Offences
committed
within the
jurisdiction
of the
Admiralty.

72. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the High Seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Fine and
sureties for
keeping the
peace; in
what cases.

73. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorised, fine the offender, and require him to enter into his own recognisances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act, the court may, if it shall think fit, require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorised: provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Hard labour

74. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence

the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

75. Whenever solitary confinement may be awarded for any indictable offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any indictable offence under this act, the court may sentence the offender to be once privately whipped; and the number of strokes, and the instrument with which they shall be inflicted, shall be specified by the court in the sentence.

Solitary
confinement
and whip-
ping.

76. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes, and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided that nothing in this act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the City of London

Summary
proceedings
in England
may be
under the
11 & 12 Vict.
c. 43, and in
Ireland
under the
14 & 15 Vict.
c. 93.

except in
London and
the metro-
politan
police dis-
trict.

or the Metropolitan Police District, or the recovery or application of any penalty or forfeiture for any such offence.

The costs of the prosecution of misdemeanors against this act may be allowed.

77. The court before which any indictable misdemeanor against this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

Act not to extend to Scotland.

78. Nothing in this act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

Commencement of act.

79. This act shall commence and take effect on the first day of November one thousand eight hundred and sixty-one.

V.

FORGERY ACT.

24 & 25 VICT. CAP. 98.

An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable Offences by Forgery.—[6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

As to forging Her Majesty's seals:

1. Whosoever shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the Great Seal of the United Kingdom, Her Majesty's privy seal, any privy signet of Her Majesty, Her Majesty's royal sign manual, any of Her Majesty's seals appointed by the twenty-fourth article of the union between England and Scotland to be kept, used, and continued in Scotland, the Great Seal of Ireland, or the privy seal of Ireland, or shall forge or counterfeit the stamp or impression of any of the seals aforesaid, or shall utter any document or instrument whatsoever, having thereon or affixed thereto the stamp or impression of any such forged or counterfeited seal, knowing the same to be the stamp or impression of such forged or counter-

Forging the
Great Seal,
Privy Seal,
&c.

feited seal, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid, knowing the same to be forged or counterfeited, or shall forge or alter, or utter, knowing the same to be forged or altered, any document or instrument having any of the said stamps or impressions thereon or affixed thereto, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging transfers of stock, &c. :

Forging
transfer of
certain
stock, and
power of
attorney
relating
thereto.

2. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any act of Parliament, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock, or to receive any dividend or money payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any

of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

3. Whosoever shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England, or at the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any act of Parliament, or any owner of any dividend or money payable in respect of any such share or interest as aforesaid, and shall thereby transfer or endeavour to transfer any share or interest belonging to any such owner, or thereby receive or endeavour to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Personating the owner of certain stock, and transferring or receiving or endeavouring to transfer or receive the dividends.

4. Whosoever shall forge any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is in either of the last two preceding sections mentioned, or to receive any dividend or money payable in respect of any such share or

Forging attestation to power of attorney for transfer of stock, &c.

interest, or shall offer, utter, dispose of, or put off any such power of attorney or other authority, with any such forged name, handwriting, or signature thereon, knowing the same to be forged, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Making
false entries
in the books
of the public
funds.

5. Whosoever shall wilfully make any false entry in, or wilfully alter any word or figure in, any of the books of account kept by the Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland, in which books the accounts of the owners of any stock, annuities, or other public funds which now are or hereafter may be transferable at the Bank of England or at the Bank of Ireland shall be entered and kept, or shall in any manner wilfully falsify any of the accounts of any of such owners in any of the said books, with intent in any of the cases aforesaid to defraud, or shall wilfully make any transfer of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Clerks of the
Bank
making out

6. Whosoever, being a clerk, officer, or servant of or other person employed or intrusted by the

Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland, shall knowingly make out or deliver any dividend warrant, or warrant for payment of any annuity, interest, or money payable at the Bank of England or Ireland, for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

false
dividend
warrants.

As to forging India bonds :

7. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bond commonly called an East India Bond, or any bond, debenture, or security issued or made under the authority of any act passed or to be passed relating to the East Indies, or any indorsement on or assignment of any such bond, debenture, or security, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging an
East India
bond.

As to forging exchequer bills, &c. :

8. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any exchequer bill or exchequer bond or exchequer debenture, or any indorsement on or assignment of any exchequer

Forging
exchequer
bills, bonds,
and
debentures,
&c.

bill or exchequer bond or exchequer debenture, or any receipt or certificate for interest accruing thereon, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement.

Making
plates, &c.,
in imitation
of those
used for
exchequer
bills, &c.

9. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his custody or possession, any frame, mould or instrument having therein any words, letters, figures, marks, lines, or devices peculiar to and appearing in the substance of any paper provided or to be provided or used for exchequer bills or exchequer bonds or exchequer debentures, or any machinery for working any threads into the substance of any paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads, or devices, or any plate peculiarly employed for printing such exchequer bills, bonds, or debentures, or any die or seal peculiarly used for preparing any such plate, or for sealing such exchequer bills, bonds, or debentures, or any plate, die, or seal intended to imitate any such plate, die, or seal as aforesaid, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Making
paper in

10. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party

accused), shall make, or cause to procure to be made, or aid or assist in making any paper in the substance of which shall appear any words, letters, figures, marks, lines, threads, or other devices peculiar to and appearing in the substance of any paper provided or to be provided or used for such exchequer bills, bonds or debentures, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same, or shall knowingly have in his custody or possession any paper whatsoever, in the substance whereof shall appear any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any parts of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same, or shall cause or assist in causing any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same, to appear in the substance of any paper whatever, or shall take or assist in taking any impression of any such plate, die, or seal as in the last preceding section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

imitation of
that used for
exchequer
bills, &c.

11. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive, or knowingly have in his custody or possession, any paper manufactured and provided by or under the directions of the Commissioners of Inland Revenue or Commissioners of Her Majesty's Treasury, for the purpose of being used as

Having in
possession
paper,
plates, or
dies to be
used for
exchequer
bills, &c.

exchequer bills or exchequer bonds or exchequer debentures, before such paper shall have been duly stamped, signed, and issued for public use, or any such plate, die, or seal as in the last two preceding sections mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three years, with or without hard labour.

As to forging bank notes :

Forging a
bank note,
&c.

12. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any note or bill of exchange of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange, or bank post bill, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Purchasing
or receiving
or having
forged bank
notes.

13. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive from any other person, or have in his custody or possession, any forged bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged, shall be guilty of felony, and being convicted thereof shall be liable,

at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

As to making and engraving plates, &c., for bank notes, &c. :

14. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use, or knowingly have in his custody or possession, any frame, mould, or instrument for the making of paper with the words "Bank of England" or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount expressed in a word or words in Roman letters, visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes, bills of exchange, or bank post bills of such banks respectively, or shall make, use, sell, expose to sale, utter, or dispose of, or knowingly have in his custody or possession, any paper whatsoever with the words "Bank of England" or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount expressed in a word or words in Roman letters, appearing visible in the substance of the paper, or with any device or distinction peculiar

Making or having mould for making paper with the words "Bank of England," or "Bank of Ireland," or with curved bar lines, &c., or selling such paper.

to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes, bills of exchange, or bank post bills of such banks respectively, or shall by any art or contrivance cause the words "Bank of England," or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, or any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes, bills of exchange, or bank post bills of such banks respectively, to appear visible in the substance of any paper, or shall cause the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words in Roman letters, to appear visible in the substance of the paper whereon the same shall be written or printed, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Proviso as to
paper used
for bills of
exchange,
&c.

15. Nothing in the last preceding section contained shall prevent any person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas, or in a numerical figure or figures denoting the amount thereof in pounds sterling, appearing visible in the substance of the paper upon which the same shall be written or printed, nor shall prevent any person from making, using, or selling any paper having waving or curved lines or any other devices in the nature of watermarks visible in the substance of the paper, not being bar lines

or laying wire lines, provided the same are not so contrived as to form the ground work or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines or the watermarks of the paper used by the Governor and Company of the Banks of England and Ireland respectively.

16.⁽¹⁾ Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of a promissory note, bill of exchange, or bank post bill purporting to be a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England, or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company or person carrying on the business of bankers, or to be a blank bank note, blank promissory note, blank bank bill of exchange, or blank bank post bill of the Governor and Company of the Bank of England, or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or to be a part of a bank note, promissory note, bank bill of exchange or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or any name, word, or character resembling or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by the Governor and

Engraving or having any plate, &c., for making notes of Bank of England or Ireland, or other banks, or having such plate, &c., or uttering or having paper upon which a blank bank note, &c., shall be printed.

(¹) *Engraving plate of a Scotch bank note.*—It is an offence under sect. 16 to feloniously and without lawful excuse engrave upon a plate in England a note of a bank in Scotland or in the colonies: (*Reg. v. Brackenridge and another*, 18 L. T. Rep. 369; Law Rep. 1 C. C. Res. 133.)

Company of the Bank of England or the Governor and Company of the Bank of Ireland, or by any such other body corporate, company, or person as aforesaid, or shall use any such plate, wood, stone, or other material, or any other instrument or device, for the making or printing any bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, or knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession, any paper upon which any blank bank note, blank bank bill of exchange, or blank bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or part of a bank note, bank bill of exchange, or bank post bill, or any name, word, or character resembling or apparently intended to resemble any such subscription, shall be made or printed, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Engraving on a plate, &c., any word, number, or device resembling part of a bank note or bill, or using or

17. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any word, number, figure, device, character, or ornament the impression taken from which shall resemble or ap-

parently be intended to resemble any part of a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, or shall use or knowingly have in his custody or possession, any such plate, wood, stone, or other material, or any other instrument or device for the impressing or making upon any paper or other material any word, number, figure, character, or ornament which shall resemble, or apparently be intended to resemble any part of a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession, any paper or other material upon which there shall be an impression of any such matter as aforesaid, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

having any such plate, &c., or uttering or having any paper on which any such word, &c., is impressed.

18. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use any frame, mould, or instrument for the manufacture of paper, with the name or firm of any body corporate, company, or person carrying on the business of bankers (other than and except the Banks of England and Ireland respectively), appearing visible in the substance of the paper, or knowingly have in his

Making or having mould for making paper with the name of any banker, or making or having such paper.

custody or possession any such frame, mould, or instrument, or make use, sell, expose to sale, utter, or dispose of, or knowingly have in his custody or possession, any paper in the substance of which the name or firm of any such body corporate, company, or person shall appear visible, or by any art or contrivance cause the name or firm of any such body corporate, company, or person to appear visible in the substance of the paper upon which the same shall be written or printed, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Engraving plates for foreign bills or notes, or using or having such plates, or uttering paper on which any part of any such bill or note is printed.

19.⁽²⁾ Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any bill of exchange, promissory note, undertaking, or order for payment of money, in whatsoever language the same may be expressed, and whether the same shall or shall not be or be intended to be under seal, purporting to be the bill, note, undertaking, or order or part of the bill, note, undertaking, or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body cor-

⁽²⁾ *Photographic impression on glass.*—The taking of a “positive” impression of a note on glass by means of the photographic process is a “making” of a note within the meaning of this section, although the impression so taken is evanescent, and although it cannot be printed or engraved from until it has been converted into a “negative”: (*Reg. v. Rinaldi*, Leigh & Cave, 330; 9 Cox Crim. Cas. 391; 33 L. J. M. C. 28.)

porate or body of the like nature, constituted or recognised by any foreign prince or state, or of any person or company of persons, resident in any country not under the dominion of Her Majesty, or shall use, or knowingly have in his custody or possession, any plate, stone, wood, or other material, upon which any such foreign bill, note, undertaking, or order, or any part thereof, shall be engraved or made, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession, any paper upon which any part of any such foreign bill, note, undertaking, or order shall be made or printed, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging deeds, wills, bills. of exchange, &c. :

20. ⁽³⁾ Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, or any bond or writing obligatory, or any assignment at law or in equity of any such

Forging
deeds,
bonds, &c.

⁽³⁾ *Deed—Ante-dating.*—R. made an equitable deposit of title-deeds with G. for 730*l.*, and afterwards assigned all his property to B. for the benefit of his creditors. He and his assignee B. then, for an additional advance, conveyed to G. the freehold of the property to which the deeds so deposited related. After this, the prisoner R. executed a deed of assignment to the other prisoner of a large part of the land so conveyed to G. for a long term of years, but this deed was falsely ante-dated before the conveyance by R. and B. to G., and upon this deed the prisoners resisted G.'s title to possession of this part of the land. Held, that this deed so ante-dated for the purpose of defrauding G., amounted to forgery : (*Reg. v. Ritson and another*, 21 L. T. Rep. 437 ; 29 L. J. M. C. 10.)

bond or writing obligatory, or shall forge any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any deed, bond, or writing obligatory, or shall offer, utter, dispose of, or put off any deed, bond, or writing obligatory, having thereon any such forged name, handwriting, or signature, knowing the same to be forged, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
wills.

21. Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any will, testament, codicil, or testamentary instrument, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
bills of
exchange or
promissory
notes.

22. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, indorsement, or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement or assignment of any such promissory note, with intent to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

23.(4) Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority, or request, or any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill, or other security for the pay-

Forging
orders,
receipts, &c.,
for money,
goods, &c.

(4) *Guarantee*.—Under this section it has been held that a written promise in consideration of his appointing B. his agent, to guarantee A. against any loss he may incur by B.'s negligence or dishonesty, is an undertaking for the payment of money: (*Reg. v. Joyce*, Leigh & Cave, 576; 10 Cox Crim. Cas. 100; 34 L. J. M. C. 168.)

A turnpike toll-gate ticket is a receipt for money within this section: (*Reg. v. Fitch*, Leigh & Cave, 159; 9 Cox Crim. Cas. 160; *Reg. v. Howley*, 6 L. T. Rep. 256; 31 L. J. M. C. 146.)

Acquittance—Receipt.—A document issued to members of the Ancient Order of Foresters Friendly Society called a "clearance," certified that the member had paid all his dues and demands, and authorised any court of the order to accept the bearer as a clearance member. Held, that this was not the subject of forgery within the twenty-third section as an acquittance or receipt: (*Reg. v. French*, 21 L. T. Rep. 727; 29 L. J. M. C. 58.)

Friendly society—Banker's passbook.—The prisoner was the treasurer and also a member of an unenrolled friendly society, and it was his duty to pay moneys received into the society's bankers. The prisoner produced to the society a fictitious book purporting to be the bank pass-book, containing entries purporting to vouch that he paid certain moneys into the bank, and that the bank acknowledged the receipt of them, which book did not truly represent the state of accounts. The prisoner having at various times drawn out moneys which he had appropriated for his own purposes, the jury found him guilty of presenting a false account with intent to obtain credit for having paid the moneys into the bank with a view to obtain other moneys from the society which he might fraudulently appropriate to his own use. Held, that the prisoner, though a member of the society, might properly be convicted of uttering a forged receipt with intent, &c.: (*Reg. v. Smith*, 6 L. T. Rep. 300; 31 L. J. M. C. 154.)

ment of money, or any indorsement on or assignment of any such accountable receipt, with intent, in any of the cases aforesaid, to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Any person making or accepting any bill, note, &c., by procuration, without lawful authority, or uttering any such bill, note, &c., so made or accepted, with intent to defraud, to be guilty of felony.

24. Whosoever, with intent to defraud, shall draw, make, sign, accept, or indorse any bill of exchange or promissory note, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or shall offer, utter, dispose of, or put off any such bill, note, undertaking, warrant, order, authority, or request so drawn, made, signed, accepted, or indorsed by procuration or otherwise, without lawful authority or excuse, as aforesaid, knowing the same to have been so drawn, made, signed, accepted, or indorsed as aforesaid, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Obliterating crossings on cheques.

25. Whenever any cheque or draft on any banker shall be crossed with the name of a banker, or with two transverse lines with the words “and company,” or any abbreviation thereof, whosoever shall obliterate, add to, or alter any such crossing, or shall offer, utter, dispose of, or put off

any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made, with intent, in any of the cases aforesaid, to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

26. Whosoever shall fraudulently forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any debenture issued under any lawful authority whatsoever, either within Her Majesty's dominions or elsewhere, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
debentures.

As to forging records, process, instruments of evidence, &c. :

27. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognisance, *cognovit actionem*, or warrant of attorney, or any original document whatsoever of or belonging to any court of record, or any bill, petition, process, notice, rule, answer, pleading, interrogatory, deposition, affidavit, affirmation, report, order, or decree, or any original document whatsoever of or belonging to any court of equity or Court of Admiralty in England or

Forging
proceedings
of courts of
record or
courts of
equity.

Ireland, or any document or writing, or any copy of any document or writing, used or intended to be used as evidence in any court in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
copies or
certificates
of records,
process of
courts not of
record, and
using forged
process.

28. Whosoever, being the clerk of any court, or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, shall utter any false copy or certificate of any record, knowing the same to be false; and whosoever, other than such clerk, officer, or deputy, shall sign or certify any copy or certificate of any record as such clerk, officer, or deputy; and whosoever shall forge or fraudulently alter, or offer, utter, dispose of, or put off; knowing the same to be forged or fraudulently altered, any copy or certificate of any record, or shall offer, utter, dispose of, or put off any copy or certificate of any record having thereon any false or forged name, handwriting, or signature, knowing the same to be false or forged; and whosoever shall forge the seal of any court of record, or shall forge or fraudulently alter any process of any court other than such courts as in the last preceding section mentioned, or shall serve or enforce any forged process of any court whatsoever, knowing the same to be forged, or shall deliver or cause to be delivered to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree or order of any court of law or equity, or a copy thereof, knowing the same to be false, or shall act or profess to act under any such false process, knowing the same to be false, shall be guilty of felony, and being con-

victed thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

29. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any instrument, whether written or printed, or partly written and partly printed, which is or shall be made evidence by any act passed or to be passed, and for which offence no punishment is herein provided, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
instruments
made evi-
dence by
any act of
Parliament.

As to forging court rolls :

30. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any court roll, or copy of any court roll, relating to any copyhold or customary estate, with intent to defraud, shall be guilty of felony; and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging
court rolls.

As to forging registers of deeds :

31. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any memorial, affidavit, affirmation, entry, certificate,

Forgery as
to the
registry of
deeds.

indorsement, document, or writing, made or issued under the provisions of any act passed or hereafter to be passed for or relating to the registry of deeds, or shall forge or counterfeit the seal of or belonging to any office for the registry of deeds, or any stamp or impression of any such seal; or shall forge any name, handwriting, or signature purporting to be the name, handwriting, or signature of any person to any such memorial, affidavit, affirmation, entry, certificate, indorsement, document, or writing which shall be required or directed to be signed by or by virtue of any act passed or to be passed, or shall offer, utter, dispose of, or put off any such memorial or other writing as in this section before mentioned, having thereon any such forged stamp or impression of any such seal, or any such forged name, handwriting, or signature, knowing the same to be forged, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging orders, &c., of justices of the peace :

Forging
orders of
justices, re-
cognisances,
affidavits,
&c.

32. Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any summons, conviction, order, or warrant of any justice of the peace, or any recognisance purporting to have been entered into before any justice of the peace, or other officer authorised to take the same, or any examination, deposition, affidavit, affirmation, or solemn declaration, taken or made before any justice of the peace, shall be guilty of felony, and being convicted thereof shall

be liable, at the discretion of the court, to be kept in penal servitude for the term of three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging the name of the Accountant General, &c. :

33. Whosoever, with intent to defraud, shall forge or alter any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing made or purporting or appearing to be made by the Accountant General, or any other officer of the Court of Chancery in England or Ireland, or by any judge or officer of the Landed Estates Court in Ireland, or by any officer of any court in England or Ireland, or by any cashier or other officer or clerk of the Governor and Company of the Bank of England or Ireland, or the name, handwriting, or signature of any such Accountant General, judge, cashier, officer, or clerk as aforesaid, or shall offer, utter, dispose of, or put off any such certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument, or writing, knowing the same to be forged or altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging name of Accountant General, &c., of Court of Chancery in England or Ireland, or of any judge of the Landed Estates Court in Ireland.

As to falsely acknowledging recognisances, &c. :

34. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall, in the name of any other person, acknowledge any recognisance or bail, or any

Acknowledging recognisance, bail, *cognovit*, &c., in the name of another.

cognovit actionem, or judgment, or any deed or other instrument, before any court, judge, or other person lawfully authorised in that behalf, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging marriage licences :

Forging or uttering marriage licence or certificate.

35. Whosoever shall forge or fraudulently alter any licence of or certificate for marriage, or shall offer, utter, dispose of, or put off any such licence or certificate, knowing the same to be forged or fraudulently altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging registers of births, marriages, and deaths :

Forging registers of births, baptisms, marriages, deaths, or burials.

36. Whosoever shall unlawfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any register of births, baptisms, marriages, deaths, or burials which now is or hereafter shall be by law authorised or required to be kept in England or Ireland, or any part of any such register, or any certified copy of any such register, or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or shall knowingly and unlawfully insert or cause or

permit to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial, or shall knowingly and unlawfully give any false certificate relating to any birth, baptism, marriage, death or burial, or shall certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any register office or burial board, or shall offer, utter, dispose of, or put off any such register, entry, certified copy, certificate, or seal, knowing the same to be false, forged, or altered, or shall offer, utter, dispose of, or put off any copy of any entry in any such register, knowing such entry to be false, forged, or altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

37. Whosoever shall knowingly and wilfully insert or cause or permit to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed or required to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface, or injure, or shall for any fraudulent pur-

Making
false entries
in copies of
register sent
to registrar.

pose take from its place of deposit, or conceal, any such copy of any register, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to demanding property upon forged instruments :

Demanding
property
upon forged
instruments.

38. Whosoever, with intent to defraud, shall demand, receive, or obtain, or cause or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under, upon, or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, or under, upon, or by virtue of any probate or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate or letters of administration shall have been obtained to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to other matters :

Forging any
instrument,
however
designated,
which is in
law a will,

39. Where by this or by any other act any person is or shall hereafter be made liable to punishment for forging or altering, or for offering, uttering, disposing of, or putting off, knowing the

same to be forged or altered, any instrument or writing designated in such act by any special name or description and such instrument or writing, however designated, shall be in law a will, testament, codicil, or testamentary writing, or a deed, bond, or writing obligatory, or a bill of exchange, or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, order, authority, or request for the payment of money, or an indorsement on or assignment of an undertaking, warrant, order, authority, or request for the payment of money, within the true intent and meaning of this act, in every such case the person forging or altering such instrument or writing, or offering, uttering, disposing of, or putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this act, and punished accordingly.

40. Where the forging or altering any writing, or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this act expressed to be an offence, if any person shall, in England or Ireland, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter in whatsoever place or country out of England and Ireland, whether under the dominion of Her Majesty or not, such writing or matter may purport to be made or may have been made, and in whatever language the same or any part thereof may be expressed, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if

bill of exchange, &c.

Forging, &c., in England or Ireland documents purporting to be made, or actually made, out of England and Ireland, forging, &c., in England or Ireland bills of exchange, &c., purporting to be payable out of England or Ireland.

the writing or matter had purported to be made or had been made in England or Ireland; and if any person shall in England or Ireland forge or alter, or offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or security, or any deed, bond, or writing obligatory for the payment of money (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose), or any indorsement on or assignment of any such undertaking, warrant, order, authority, request, deed, bond, or writing obligatory in whatsoever place or country out of England and Ireland, whether under the dominion of Her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, authority, request, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, order, authority, or request be or be not under seal, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in England or Ireland.

Forgers, &c.,
may be tried
in the
county

41. If any person shall commit any offence against this act, or shall commit any offence of forging or altering any matter whatsoever, or of

offering, uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law, or by virtue of any act passed or to be passed, every such offender may be dealt with, indicted, tried, and punished, in any county or place in which he shall be apprehended or be in custody, in the same manner in all respects as if his offence had been actually committed in that county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, in any county or place in which he shall be apprehended or be in custody, in the same manner in all respects as if his offence, and the offence of his principal, had been actually committed in such county or place.

where they
are appre-
hended or
are in
custody.

42. In any indictment for forging, altering, offering, uttering, disposing, or putting off any instrument it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.

Description
of instru-
ment in
indictments
for forgery.

43. In any indictment for engraving or making the whole or any part of any instrument, matter, or thing whatsoever, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been made or printed, it shall be sufficient to describe

Description
of instru-
ment in
indictments
for engrav-
ing, &c.

such instrument, matter, or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter or thing.

Intent to defraud particular persons need not be alleged or proved.

44. It shall be sufficient, in any indictment for forging, altering, uttering, offering, disposing of, or putting off any instrument whatsoever, where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.

Interpretation as to criminal possession.

45. Where the having any matter in the custody or possession of any person is in this act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in the actual custody or possession of any other person, or shall knowingly and wilfully have any such matter in any dwelling house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act.

Search for paper or implements employed in any forgery, and for forged instruments.

46. If it shall be made to appear, by information on oath or affirmation before a justice of the peace, that there is reasonable cause to believe that any person has in his custody or possession, without lawful authority or excuse, any note or

bill of the Governor and Company of the Bank of England or Ireland, or of any body corporate, company, or person carrying on the business of bankers, or any frame, mould, or implement for making paper in imitation of the paper used for such notes or bills, or any such paper, or any plate, wood, stone, or other material having thereon any words, forms, devices, or characters capable of producing or intended to produce the impression of any such note or bill, or any part thereof, or any tool, implement, or material used or employed or intended to be used or employed in or about any of the operations aforesaid, or any forged security, document, or instrument whatsoever, or any machinery, frame, mould, plate, die, seal, paper, or other matter or thing used or employed or intended to be used or employed in the forgery of any security, document, or instrument whatsoever, such justice may, if he think fit, grant a warrant to search for the same; and if the same shall be found upon such search, it shall be lawful to seize and carry the same before some justice of the county or place, to be by him disposed of according to law; and all such matters and things so seized as aforesaid shall by order of the court where any such offender shall be tried, or in case there shall be no such trial then by order of some justice of the peace, be defaced and destroyed or otherwise disposed of, as such court or justice shall direct.

47. Whosoever shall, after the commencement of this act, be convicted of any offence which shall have been subjected by any act or acts to the same pains and penalties as are imposed by the act passed in the fifth year of the reign of Queen Elizabeth, intituled "An Act against Forgeries of False Deeds and Writings," for any of the offences first enumerated in the said act, shall be guilty of felony, and shall, in lieu of such

Other punishments substituted for those of the 5 Eliz. c. 14, which have been adopted in other acts.

pains and penalties, be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

All forgeries which were capital before the 1 Will. 4, c. 66, and are not otherwise punishable under this act, shall be punished with penal servitude for life, &c.

48. Where by any act now in force any person falsely making, forging, counterfeiting, erasing, or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away, or making use of any matter whatsoever, knowing the same to have been falsely made, forged, counterfeited, erased, or altered, or any person demanding or endeavouring to receive or have any thing, or to do or cause to be done any act, upon or by virtue of any matter whatsoever knowing such matter to have been falsely made, forged, counterfeited, erased, or altered, would, according to the provisions contained in any such act, be guilty of felony, and would, before the passing of the act of the first year of King William the Fourth, chapter sixty-six, have been liable to suffer death as a felon; or where by any act now in force any person falsely personating another, or falsely acknowledging anything in the name of another, or falsely representing any other person than the real party, to be such real party, or wilfully making a false entry in any book, account, or document or in any manner wilfully falsifying any part of any book, account, or document, or wilfully making a transfer of any stock, annuity, or fund in the name of any person not being the owner thereof, or knowingly taking any false oath, or knowingly making any false affidavit or false affirmation, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the

will on which such probate shall have been obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would, according to the provisions contained in any such act, be guilty of felony, and would before the passing of the said act of the first year of King William the Fourth have been liable to suffer death as a felon; or where by any act now in force any person making or using, or knowingly having in his custody or possession, any frame, mould, or instrument for the making of paper, with certain words visible in the substance thereof, or any person making such paper, or causing certain words to appear visible in the substance of any paper, would, according to the provisions contained in any such act, be guilty of felony, and would before the passing of the said act of the first year of King William the Fourth have been liable to suffer death as a felon; then, and in each of the several cases aforesaid, if any person shall after the commencement of this act be convicted of any such felony as is hereinbefore in this section mentioned, or of aiding, abetting, counselling, or procuring the commission thereof, and the same shall not be punishable under any of the other provisions of this act, every such person shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

49. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and

Principals in the second degree and accessories.

Abettors in
misdemeanors.

every accessory after the fact to any felony punishable under this act shall on conviction be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Offences
committed
within the
jurisdiction
of the
Admiralty.

50. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed on "the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's land or naval forces.

Fine and
sureties for
keeping the
peace; in
what cases.

51. Whenever any person shall be convicted of a misdemeanor under this act it shall be lawful for the court, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorised, to fine the offender, and to require him to enter into his own recognisances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in all cases of

felonies in this act mentioned it shall be lawful for the court, if it shall think fit, to require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to any of the punishments by this act authorised; provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

52. Whenever imprisonment, with or without Hard labour hard labour, may be awarded for any offence under this act; the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

53. Whenever solitary confinement may be Solitary confinement. awarded for any offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year.

54. The court before which any indictable The costs of the prosecution of misdemeanor against this act may be allowed. misdemeanor against this act shall be prosecuted or tried, may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

55. Nothing in this act contained shall extend Act not to extend to Scotland. to Scotland, except as otherwise hereinbefore expressly provided.

56. This act shall commence and take effect Commencement of act. on the first day of November one thousand eight hundred and sixty one.

VI.

COINAGE OFFENCES ACT.

24 & 25 VICT. CAP. 99.

An Act to consolidate and amend the Statute Law of the United Kingdom against Offences relating to the Coin.—[6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of the United Kingdom against offences relating to the coin: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpreta-
tion of terms

Current gold
and silver
coin.

Copper coin.

False or
counterfeit
coin.

1. In the interpretation of and for the purposes of this act, the expression "the Queen's current gold or silver coin" shall include any gold or silver coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's dominions, whether within the United Kingdom or otherwise; and the expression "the Queen's copper coin" shall include any copper coin and any coin of bronze or mixed metal coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's said dominions; and the expression "false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin" shall include any of the

current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination; and the expression "the Queen's current coin" shall include any coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's said dominions, and whether made of gold, silver, copper, bronze, or mixed metal; and where the having any matter in the custody or possession of any person is mentioned in this act, it shall include not only the having of it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person.

Current coin

What shall be possession.

2. Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Counterfeiting the gold or silver coin.

3. Whosoever shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or of silver, or by

Colouring counterfeit coin or any pieces of

metal with
intent to
make them
pass for gold
or silver
coin.

any means whatsoever, wash, case over, or colour any coin whatsoever resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever, wash, case over, or colour any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild, or shall, with any wash or materials capable of producing the colour or appearance of gold, or by any means whatsoever, wash, case over, or colour any of the Queen's current silver coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold coin; or shall gild, or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or silver, or by any means whatsoever, wash, case over, or colour any of the Queen's current copper coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Colouring or
altering
genuine
coin with
intent to
make it pass
for a higher
coin.

Impairing
the gold or

4. Whosoever shall impair, diminish, or lighten any of the Queen's current gold or silver coin,

with intent that the coin so impaired, diminished, silver coin with intent &c. or lightened may pass for the Queen's current gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

5. Whosoever shall unlawfully have in his custody or possession⁽¹⁾ any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which shall have been produced or obtained by impairing, diminishing, or lightening any of the Queen's current gold or silver coin, knowing the same to have been so produced or obtained, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Unlawful possession of filings or clippings of gold or silver coin.

6. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin at or for a lower rate or value than the same imports or was apparently intended to import, shall, in England and Ireland, be guilty of

Buying or selling, &c., counterfeit gold or silver coin for lower value than its denomination.

⁽¹⁾ As to the meaning of the expression "custody or possession," see the interpretation clause (sect. 1, *ante*).

felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and in any indictment for any such offence as in this section aforesaid it shall be sufficient to allege that the party accused did buy, sell, receive, pay, or put off, or did offer to buy, sell, receive, pay, or put off, the false or counterfeit coin at or for a lower rate of value than the same imports or was apparently intended to import, without alleging at or for what rate, price, or value the same was bought, sold, received, paid, or put off, or offered to be bought, sold, received, paid, or put off.

Importing
counterfeit
coin from
beyond-seas.

7. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall import or receive into the United Kingdom from beyond the seas any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Exporting
counterfeit
coin.

8. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall export, or put on board any ship, vessel, or boat for the purpose of being exported from the United Kingdom, any false or counter-

feit coin, resembling or apparently intended to resemble or pass for any of the Queen's current coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

9. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.

Uttering
counterfeit
gold or
silver coin.

10. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and shall, at the time of such tendering, uttering, or putting off, have in his custody or possession, besides the false or counterfeit coin so tendered, uttered, or put off, any other piece of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall, either on the day of such tendering, uttering or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing

Uttering
accom-
panied by
possession
of other
counterfeit
coin, or
followed by
a second
uttering.

the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Having
three or
more pieces
of counter-
feit gold or
silver coin
in posses-
sion, &c.,
with intent,
&c.

11. Whosoever shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended*to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Every
second
offence of
uttering, &c.,
after a pre-
vious con-
viction shall
be felony.

12. Whosoever, having been convicted either before or after the passing of this act of any such misdemeanor or crime and offence as in any of the last three preceding sections mentioned, or of any felony or high crime and offence against this or any former act relating to the coin, shall afterwards commit any of the misdemeanors or crimes and offences in any of the said sections mentioned, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

13.⁽²⁾ Whosoever shall, with intent to defraud, tender, utter, or put off as or for any of the Queen's current gold or silver coin, any coin not being such current gold or silver coin, or any medal or piece of metal or mixed metals, resembling in size, figure, and colour the current coin as or for which the same shall be so tendered, uttered, or put off, such coin, medal, or piece of metal, or mixed metals so tendered, uttered, or put off, being of less value than the current coin as or for which the same shall be so tendered, uttered, or put off, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.

Uttering
foreign coin,
medals, &c.,
as current
coin with
intent to
defraud.

14.⁽³⁾ Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin; and whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or

Counterfeit-
ing, &c..
copper coin.

⁽²⁾ *Coining—Uttering a medal resembling a coin.*—Under this section the prisoner was indicted for uttering a medal resembling a half-sovereign, in size, figure, and colour, but of less value than half-a-sovereign. The evidence was that the medal was of the same diameter as a half-sovereign, and similar to it in colour; that the guerling was round and not square; and that on the obverse side there was a stamp of the head of the Queen similar to that of a half-sovereign, but with a different legend encircling it. There was no evidence of the impression on the reverse side of the medal; and it was held that there was sufficient evidence that the medal resembled a half-sovereign in size, figure, and colour, to sustain the conviction: (*Reg v. Robinson, Leigh & Cave*, 604; 10 Cox Crim. Cas. 107; 34 L. J. M. C. 176.)

⁽³⁾ By the interpretation clause (sect. 1) the expression "*the Queen's copper coin*" is to include "any copper coin, and any coin of bronze or mixed metal coined in any of Her Majesty's mints, or lawfully current by virtue of any proclamation or otherwise in any part of Her Majesty's dominions."

mend, or begin to proceed to make or mend, or buy or sell, or have in his custody or possession, any instrument, tool, or engine adapted and intended for the counterfeiting any of the Queen's current copper coin; or shall buy, sell, receive, pay or put off, or offer to buy, sell, receive, pay or put off, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, at or for a lower rate or value than the same imports or was apparently intended to import, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Uttering
base copper
coin.

15. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.

Defacing
the coin by
stamping
words
thereon.

16. Whosoever shall deface any of the Queen's current gold, silver, or copper coin, by stamping thereon any names or words, whether such coin

shall or shall not be thereby diminished or lightened, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour.

17. No tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as in the last preceding section mentioned shall be allowed to be a legal tender; and whosoever shall tender, utter, or put off any coin so defaced shall, on conviction thereof before two justices, be liable to forfeit and pay any sum not exceeding forty shillings: provided that it shall not be lawful for any person to proceed for any such last-mentioned penalty without the consent, in England or Ireland, of Her Majesty's Attorney-General for England or Ireland respectively, or in Scotland of the Lord Advocate.

Tender of coin so defaced not to be a legal tender, and penalty for uttering the same.

18. Whosoever shall make or counterfeit any kind of coin not being the Queen's current gold or silver coin, but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and without or without solitary confinement.

Counterfeiting foreign gold and silver coin.

19. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall bring or receive into the United Kingdom any such false or counterfeit coin resem-

Bringing such counterfeit coin into the United Kingdom.

bling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalty for
uttering
such coun-
terfeit coin.

20. Whosoever shall tender, utter, or put off any such false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding six months, with or without hard labour.

Second
offence of
uttering
counterfeit
foreign coin.

21. Whosoever, having been so convicted as in the last preceding section mentioned, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and whosoever, having been so convicted of a second offence, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counter-

Third
offence.

feit, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

22. Whosoever shall falsely make or counterfeit any kind of coin not being the Queen's current coin, but resembling or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal or mixed metals of less value than the silver coin of any foreign prince, state, or country, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, for the first offence to be imprisoned for any term not exceeding one year, and for the second offence to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Persons
counterfeit-
ing foreign
coin other
than gold
and silver
coin.

23. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall have in his custody or possession any greater number of pieces than five pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, or any such copper or other coin as in the last preceding section mentioned, shall, on conviction thereof before any justice of the peace, forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such

Penalty on
persons
having more
than five
pieces of
such coun-
terfeit
foreign coin
in their
possession.

justice, and shall for every such offence forfeit and pay any sum of money not exceeding forty shillings nor less than ten shillings for every such piece of false and counterfeit coin which shall be found in the custody or possession of such person, one moiety to the informer, and the other moiety to the poor of the parish where such offence shall be committed; and in case any such penalty shall not be forthwith paid it shall be lawful for any such justice to commit the person who shall have been adjudged to pay the same to the common gaol or house of correction, there to be kept to hard labour for the space of three months, or until such penalty shall be paid.

**Making,
mending, or
having pos-
session of
any coining
tools, felony.**

24.⁽⁴⁾ Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or possession, any puncheon, counter puncheon, matrix, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be adapted and intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin, or of any coin of any foreign prince, state, or country, or any part or parts of both or either of such sides; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any edger, edging or other tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such

(⁴) As to having in his "custody or possession," see the interpretation clause (sect. 1), and also the case of *Reg. v. Weeks*, 4 L. T. Rep. (N.S.) 373; 30 L. J. 141, M.C.

coin as in this section aforesaid, knowing the same to be so adapted and intended as aforesaid; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any press for coinage, or any cutting engine for cutting by force of a screw or of any other contrivance, round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

25. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly convey out of any of Her Majesty's mints any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press, or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal, or mixture of metals, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Conveying
tools or
moneys out
of the mint
without
authority,
felony.

Coin suspected to be diminished or counterfeited may be cut by any person to whom it is tendered.

Who shall bear the loss.

26. Where any coin shall be tendered as the Queen's current gold or silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wearing, or to be counterfeited, it shall be lawful for such person to cut, break, bend, or deface such coin, and if any coin so cut, broken, bent, or defaced shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeited, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and shall appear to be lawful coin, the person cutting, breaking, bending, or defacing the same is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise whether the coin so cut, broken, bent, or defaced be diminished in manner aforesaid, or counterfeited, it shall be heard and finally determined in a summary manner by any justice of the peace, who is hereby empowered to examine upon oath as well the parties as any other person, in order to the decision of such dispute; and the tellers at the receipt of Her Majesty's exchequer, and their deputies and clerks, and the receivers general of every branch of Her Majesty's revenue, are hereby required to cut, break, or deface, or cause to be cut, broken, or defaced every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of Her Majesty's revenue.

Provision for the discovery and seizure of counterfeit coin and coiningtools, for securing them as evidence, and for ultimately disposing of them.

27. If any person shall find or discover in any place whatever, or in the custody or possession of any person having the same without lawful authority or excuse, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold, silver, or copper coin, or any coin of any foreign prince, state, or country, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, or any filings or

clippings, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which shall have been produced or obtained by diminishing or lightening any of the Queen's current gold or silver coin, it shall be lawful for the person so finding or discovering and he is hereby required to seize the same, and to carry the same forthwith before some justice of the peace; and where it shall be proved, on the oath of a credible witness before any justice of the peace, that there is reasonable cause to suspect that any person has been concerned in counterfeiting the Queen's current gold, silver, or copper coin, or any such foreign or other coin as in this act before mentioned, as has in his custody or possession any such false or counterfeit coin, or any instrument, tool, or engine whatsoever adapted and intended for the making or counterfeiting of any such coin, or any other machine used or intended to be used for making or counterfeiting any such coin, or any such filings, clippings, or bullion, or any such gold or silver in dust, solution, or otherwise as aforesaid, it shall be lawful for any justice of the peace, by warrant under his hand, to cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or in the night, and if any such false or counterfeit coin, or any such instrument, tool, or engine, or any such machine, or any such filings, clippings, or bullion, or any such gold or silver in dust, solution, or otherwise as aforesaid, shall be found in any place so searched, to cause the same to be seized and carried forthwith before some justice of the peace; and whensoever any such false or counterfeit coin, or any such instrument, tool, or engine, or any such machine, or any such filings, clippings, or bullion, or any such gold or silver in dust, solution, or otherwise as aforesaid, shall in any case whatsoever be seized and carried before a justice of the peace, he shall, if

necessary, cause the same to be secured, for the purpose of being produced in evidence against any person who may be prosecuted for any offence against this act; and all such false and counterfeit coin, and all instruments, tools, and engines adapted and intended for the making or counterfeiting of coin, and all such machines, and all such filings, clippings, and bullion, and all such gold and silver in dust, solution, or otherwise as aforesaid, after they shall have been produced in evidence, or when they shall have been seized, and shall not be required to be produced in evidence, shall forthwith be delivered up to the officers of Her Majesty's Mint, or to the solicitors of Her Majesty's Treasury, or to any person authorised by them to receive the same.

Venue.

28. Where any person shall tender, utter, or put off any false or counterfeit coin in one county or jurisdiction, and shall also tender, utter, or put off any other false or counterfeit coin in any other county or jurisdiction, either on the day of such first-mentioned tendering, uttering, or putting off, or within the space of ten days next ensuing, or where two or more persons, acting in concert in different counties or jurisdictions, shall commit any offence against this act, every such offender may be dealt with, indicted, tried, and punished, and the offence laid and charged to have been committed, in any one of the said counties or jurisdictions, in the same manner in all respects as if the offence had been actually and wholly committed within such one county or jurisdiction.

What shall
be sufficient
proof of
coin being
counterfeit.

29. Where, upon the trial of any person charged with any offence against this act, it shall be necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer, or

other officer of Her Majesty's Mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.

30. Every offence of falsely making or counterfeiting any coin, or of buying, selling, receiving, paying, tendering, uttering, or putting off, or of offering to buy, sell, receive, pay, utter, or put off, any false or counterfeit coin, against the provisions of this act, shall be deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered, or put off, or offered to be bought, sold, received, paid, uttered, or put off, shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

Where the counterfeiting coin shall be complete.

31. It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence, or any high crime and offence, or crime and offence, against this act, and to convey or deliver him to some peace officer, constable, or officer of police, in order to his being conveyed as soon as reasonably may be before a justice of the peace or some other proper officer, to be dealt with according to law.

Any person may apprehend any person committing any indictable offence against this act.

32. No conviction for any offence punishable on summary conviction under this act shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same.

No *certiorari*, &c.

33. All actions and prosecutions to be commenced against any person for anything done in pursuance of this act, shall, in England or Ireland,

Venue in proceedings against persons

acting under this act. be laid and tried in the county where the fact was committed, and shall, in England, Ireland, or Scotland, be commenced within six months after the fact committed, and not otherwise ; and

Notice of action. notice in writing of such action and of the cause thereof shall be given to the defendant or defender one month at least before the commencement of

General issue. the action ; and in any such action brought in England or Ireland the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon, and in Scotland the defender may insist on

Tender of amends, &c. all relevant defences ; and no plaintiff or pursuer shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant or defender ; and if, in England or Ireland, a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, or if, in Scotland, the verdict shall be for the defender, or if the pursuer shall abandon the action, or the court shall dismiss it as irrelevant or improperly laid, in every such case the defendant or defender shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant or defender has by law in other cases ; and though a verdict shall be given for the plaintiff or pursuer in any such action, such plaintiff or pursuer shall not have costs against the defendant or defender, unless the judge before whom the trial shall be shall certify his approbation of the action.

Trial of offences in Scotland.

34. All high crimes and offences, and crimes and offences, against this act, which may be committed in Scotland, shall be proceeded against

and tried according to the rules and procedure of the criminal law of Scotland; and all proceedings by this act made competent before any justice or justices, and all and every the powers and authorities by this act given to or conferred upon any such justice or justices, shall, in Scotland, be competent before and may be exercised by any sheriff, magistrate, or justice of the peace.

35. In the case of every felony punishable under the act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Punishment of principal in the second degree, and accessories.

36. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if the same had been actually committed in that county or place, and in any indictment for any such offence, or for being accessory to any such offence, the venue in the margin shall be the same as if such offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" and where any of the crimes and offences, or high crimes and offences, mentioned in this act, shall be committed at sea, and the vessel in which the same shall be committed shall be registered in Scot-

Offences committed within the jurisdiction of the Admiralty.

land, or touch at any part thereof, the courts of criminal law of Scotland may inquire, try and determine the same in the same manner as if such crime and offence, or high crime and offence, had been committed in Scotland; provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

What shall
be sufficient
evidence of
conviction
for a pre-
vious offence

37. Where any person shall have been convicted of any offence against this act, or any former act relating to the coin, and shall afterwards be indicted for any offence against this act committed subsequent to such conviction, it shall be sufficient in any such indictment, after charging such subsequent offence, to state the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence, purporting to be signed by the clerk of the court or other officer having or purporting to have the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous conviction, without proof of the signature or official character or authority of the person appearing to have signed the same, or of his custody or right to the custody of the records of the court, and for every such certificate a fee of six shillings and eightpence, and no more, shall be demanded or taken; and the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; (that is to say,) the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he

When the
previous
conviction is
to be proved
on the trial.

plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted the court may proceed to sentence him accordingly, but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry: provided that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.⁽⁵⁾

38. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this

Fine and
sureties for
keeping the
peace; in
what cases.

⁽⁵⁾ On the trial of an indictment for felonious possession of counterfeit coin with intent to utter the same after a previous conviction, the course of proceeding at the trial is first to try that part of the offence which relates to the possession, and then, if the prisoner be found guilty, to try him for the previous conviction: (*Reg. v. Martin*, 21 L. T. Rep. 469.)

act authorised, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act the court may, if it shall think fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorised: provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Hard labour. 39. Whenever imprisonment, with or without hard labour, may be awarded for an indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Solitary confinement. 40. Whenever solitary confinement may be awarded for any offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year.

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93. 41. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes; and all

provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided, that nothing in this act contained shall in any manner alter or effect any enactment relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district, for the recovery or application of any penalty or forfeiture for any such offence.

Except in London and the metropolitan police district.

42. In all prosecutions for any offence against this act in England, which shall be conducted under the direction of the solicitors of Her Majesty's Treasury, the court before which such offence shall be prosecuted or tried shall allow the expenses of the prosecution in all respects as in cases of felony; and in all prosecutions for any such offence in England which shall not be so conducted it shall be lawful for such court, in case a conviction shall take place, but not otherwise, to allow the expenses of the prosecution in like manner; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

Cost of prosecutions

43. This act shall commence and take effect on the first day of November one thousand eight hundred and sixty-one.

Commencement of act.

VII.

OFFENCES AGAINST THE PERSON
ACT.

24 & 25 VICT. CAP. 100.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person.—[6th August, 1861.]

WHEREAS it is expedient to consolidate and amend the statute law of England and Ireland relating to offences against the person : be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Homicide.

Murder.

1. Whosoever shall be convicted of murder shall suffer death as a felon.

Sentence for murder.

2. Upon every conviction for murder the court shall pronounce sentence of death, and the same may be carried into execution, and all other proceedings upon such sentence and in respect thereof may be had and taken, in the same manner in all respects as sentence of death might have been pronounced and carried into execution, and all other proceedings thereupon and in respect thereof might have been had and taken, before the passing of this act, upon a conviction for any other felony

for which the prisoner might have been sentenced to suffer death as a felon⁽¹⁾.

3. The body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the court shall so direct. Body to be buried in prison.

4. All persons who shall conspire, confederate, and agree to murder any person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not more than ten and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour. Conspiring or soliciting to commit murder.

5. Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, or to pay such fine as the court shall award, in addition to or without any such other discretionary punishment as aforesaid. Manslaughter.

6. In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which Indictment for murder or manslaughter.

⁽¹⁾ As regards the mode of carrying out the sentence of death, see the 31 Vict. c. 24, "The Capital Punishment Amendment Act, 1868," *post*.

the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed.

Excusable
homicide.

7. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony.

Petit
treason.

8. Every offence which before the commencement of the act of the ninth year of King George the Fourth, chapter thirty-one, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder.

Murder or
manslaughter
abroad.

9. Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of Her Majesty or not, every offence committed by any subject of Her Majesty, in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in any county or place in England or

Ireland in which such person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place; provided that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this act.

10. Where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or, being feloniously stricken, poisoned, or otherwise hurt at any place in England or Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in England or Ireland in which such death, stroke, poisoning, or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place.

Provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland.

Attempts to murder.

11. Whosoever shall administer to or cause to be administered to or to be taken by any person any poison or other destructive thing, or shall by any means whatsoever wound or cause any grievous bodily harm to any person with intent in any of the cases aforesaid to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for

Administering poison or wounding with intent to murder.

any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Destroying
or damaging
a building
with gun-
powder, with
intent to
murder.

12. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building with intent to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Setting fire
to or casting
away a ship
with intent
to murder.

13. Whosoever shall set fire to any ship or vessel or any part thereof, or any part of the tackle, apparel, or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy any ship or vessel, with intent in any of such cases to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Attempting
to adminis-
ter poison, or
shooting or
attempting
to shoot or
attempting
to drown,
&c., with
intent to
murder.

14. Whosoever shall attempt to administer to or shall attempt to cause to be administered to or to be taken by any person any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the

court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

15. Whosoever shall, by any means other than those specified in any of the preceding sections of this act, attempt to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By any other means attempting to commit murder.

Letters threatening to murder.

16. Whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Sending letters threatening to murder.

Acts causing or tending to cause Danger to Life or bodily Harm.

17. Whosoever shall unlawfully and maliciously prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede

Impeding a person endeavouring to save himself from shipwreck.

any person in his endeavour to save the life of any such person as in this section first aforesaid, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Shooting or attempting to shoot, or wounding with intent to do grievous bodily harm.

18.⁽²⁾ Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

What shall constitute loaded arms.

19. Any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this act, although the attempt to discharge the same may

(²) *Shooting into a crowd.*—A person who fires a pistol at a group of persons, not aiming at any one in particular but intending generally to do grievous bodily harm, and severely wounds one of the group, may be indicted and convicted for feloniously shooting and wounding the person injured with intent to do grievous bodily harm : (*Reg. v. Fretwell*, 10 L. T. Rep. 428; 33 L. J. M. C. 128.)

fail from want of proper priming or from any other cause.

20.⁽³⁾ Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Inflicting
bodily
injury, with
or without
weapon.

21. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall, by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Attempting
to choke, &c.,
in order to
commit any
indictable
offence.

22. Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or

Using
chloroform,
&c., to
commit any
indictable
offence.

(³) *Maliciously wounding—Common assault.*—Upon an indictment under sect. 20 for unlawfully and maliciously wounding or inflicting grievous bodily harm, a verdict for a common assault may be returned: (*Reg. v. Cunwell*, 20 L. T. Rep. 402.)

any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any other term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Maliciously
administer-
ing poison,
&c., so as to
endanger
life or inflict
grievous
bodily harm.

23. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Maliciously
administer-
ing poison,
&c., with
intent to
injure,
aggrieve, or
annoy any
other person.

24. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

If the jury
be not
satisfied that
any person
charged is
guilty of
felony, but
guilty of
misdemeanor they
may find

25. If, upon the trial of any person for any felony in the last but one preceding section mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanor in the last preceding section mentioned, then and in every such case the jury may acquit the accused of such

felony, and find him guilty of such misdemeanor, him guilty accordingly. and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for such misdemeanor.

26.⁽⁴⁾ Whosoever, being legally liable, either as Not providing apprentices or servants with food, &c., whereby life endangered. a master or mistress, to provide for any apprentice or servant, necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

27.⁽⁵⁾ Whosoever shall unlawfully abandon or expose any child, being under the age of two Exposing children whereby life endangered.

(⁴) *Master and servant—Neglect to provide sufficient food.*—A master is not criminally liable for the death of a servant not of tender years, although the death was caused by the insufficiency and badness of the food and lodging provided by him for her, unless the servant was of such weak intellect as to be helpless and unable to take care of herself, or was under such restraint as to be unable to withdraw herself from her master's dominion: (*Reg. v. Charlotte Smith*, 12 L. T. Rep. 608.)

(⁵) *Exposure—What amounts to.*—The mother (one of the prisoners) told the putative father before the birth of an illegitimate child that she would father it on him and he would have to pay for it. He said, "I will not pay for it, but if you send it to me I will keep it." About five weeks after its birth the prisoner put the child into a hamper carefully wrapped up, and left it at a railway station and paid the fare. The hamper was addressed, and the words "with care, to be delivered immediately," added. The transit and delivery occupied about an hour. When opened, the child was alive. It was taken to the workhouse and lived for three weeks afterwards, when it died from causes

years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Causing
bodily injury
by gun-
powder.

28. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Causing
gunpowder
to explode,
or sending
to any
person an
explosive
substance, or
throwing
corrosive
fluid on a
person, with
intent to do
grievous
bodily harm.

29. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal

not attributable to the conduct of the prisoners. Held, by a majority of the judges, that this was a case of abandonment and exposure of a child within the 27th section: (*Reg. v. Falkingham and another*, 21 L. T. Rep. 679; 29 L. J. M. C. 47.)

servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

30. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building, ship, or vessel any gunpowder or other explosive substance, with intent to do any bodily injury to any person, shall, whether or not any explosion take place, and whether or not any bodily injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Placing
gunpowder
near a
building,
with intent
to do bodily
injury to
any person.

31. Whosoever shall set or place, or cause to be set or placed, any spring gun, man trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and whosoever shall knowingly and wilfully permit any such spring gun, man trap, or other engine which may have been set or placed in any place then being in or afterwards coming into his possession or occupation by some other person to continue so set or placed, shall be

Setting
spring guns
&c., with
intent to
inflict
grievous
bodily harm.

deemed to have set and placed such gun, trap, or engine with such intent as aforesaid : provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin : provided also, that nothing in this section shall be deemed to make it unlawful to set or place or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap, or other engine which shall be set or placed, or caused or continued to be set or placed, in a dwelling house, for the protection thereof.

Placing
wood, &c.,
on a railway,
with intent
to endanger
passengers.

32. Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and if a male under the age of sixteen years with or without whipping.

Casting
stone, &c.,
upon a
railway
carriage,
with intent

33. Whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone,

or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

to endanger the safety of any person therein.

34. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Doing or omitting anything to endanger passengers by railway.

35. Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Drivers of carriages injuring persons by furious driving.

Assaults.

36. Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place,

Obstructing or assaulting a clergyman or other minister in the discharge of his duties.

or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who to the knowledge of the offender shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Assaulting a
magistrate,
&c., on
account of
his preserv-
ing wreck.

37. Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorised, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Assault with
intent to
commit

38.⁽⁶⁾ Whosoever shall assault any person with intent to commit felony, or shall assault, resist,

(6) *Wrong constable executing warrant.*—The defendant was convicted in a penalty with costs, or to be imprisoned seven days. The penalty not having been paid, a warrant was issued for his apprehension, addressed “to the constable of G.” It was given to a county police constable to execute. While he was attempting to apprehend the defendant the defendant resisted and wounded the constable. Held, that a county policeman had no authority to execute it, it being addressed to the parish constable, and that the apprehension was therefore illegal: (*Reg. v. Sanders*, 16 L. T. Rep. 331; Law Rep. 1 C. C. Res. 75.)

Assault — Execution of his duty — Character of party arrested.—Upon an indictment for assaulting a constable in

or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

felony or on
peace
officers, &c.

39. Whosoever shall beat, or use any violence or threat of violence to any person, with intent

Assaults
with intent
to obstruct

the execution of his duty, it appeared that the assault was committed whilst the constable was attempting to arrest the accused upon suspicion of having stolen some larch trees (under the value of 1*l.*) which the accused was carrying. To show that the constable was justified in suspecting the accused, the counsel for the prosecution asked the constable in his examination in chief, "What did you know had been the prisoner's previous character?" The constable replied, "I knew him to be a very bad character," and was proceeding to mention previous convictions, when he was stopped, on the ground that parol evidence of such convictions was inadmissible; but in answer to a question put by the counsel for the prosecution, he said he had seen the accused in the Court of Quarter Sessions, and before the magistrates on one occasion. Held, that although the constable might be examined in chief as to the general character of the accused, he could not be asked in chief as to the grounds of his suspicion, and therefore that the question and answer as to the grounds of the constable's suspicion were improperly admitted: (*Reg. v. Tuberfield*, 11 L. T. Rep. 385.)

Unlawful apprehension.—While the defendant was using threatening language to a third person a constable in plain clothes came up and interfered. The defendant struck the constable with his fist, and there was a struggle between them; the constable went away for assistance and was absent for an hour; he changed his plain clothes for his uniform and returned to the defendant's house with three other constables. They forced the door and entered the house. The defendant refused to come down, and threatened to kill the first man who came up to take him, and he wounded one of them in the struggle. Held, that the apprehension of the prisoner at the time was unlawful and that he could not be convicted of wounding the constable with intent to prevent his lawful apprehension: (*Reg. v. Marsden*, 18 L. T. Rep. 298; Law Rep. 1 C. C. Res. 131.)

the sale of
grain, or its
free passage.

to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of, any wheat or other grain, flour, meal, malt, or potatoes, in any market or other place, or shall beat or use any such violence or threat to any person having the care or charge of any wheat or other grain, flour, meal, malt, or potatoes, whilst on the way to or from any city, market town, or other place, with intent to stop the conveyance of the same, shall, on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months; provided that no person who shall be punished for any such offence by virtue of this section shall be punished for the same offence by virtue of any other law whatsoever.

Assaults on
seamen, &c.

40. Whosoever shall unlawfully and with force hinder or prevent any seaman, keelman, or caster from working at or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same, shall, on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding three months: provided that no person who shall be punished for any such offence by reason of this section shall be punished for the same offence by virtue of any other law whatsoever.

Assaults
arising from
combina-
tion.

41. Whosoever, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business, or manufacture, or respecting any person concerned or employed therein, shall unlawfully assault any person, shall be guilty of a misdemeanor, and

being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

42.(7) Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon conviction thereof before them, at the discretion of the justices, either be committed to the common gaol or house of correction, there to be imprisoned with or without hard labour for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of five pounds; and if such fine as shall be so awarded, together with the costs (if ordered), shall not be paid, either immediately after the conviction or within such period as the said justices shall at the time of the conviction appoint, they may commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding two months, unless such fine and costs be sooner paid.

Persons committing any common assault or battery may be imprisoned or compelled by two magistrates to pay fine and costs not exceeding 5*l*.

43. When any person shall be charged before two justices of the peace with an assault or battery upon any male child whose age shall not in the opinion of such justices exceed fourteen

Persons convicted of aggravated assaults on females and boys under

(7) This section effects a most important and judicious alteration of the old law. By the 9 Geo. 4, c. 31, s. 27, justices in the first instance could only impose a fine, and the offender could be imprisoned only upon default of payment, and that imprisonment could not be accompanied with hard labour. By the present section they have a discretion in the first instance either to impose a fine or commit to prison with or without hard labour.

Hard labour also may be given where a party is committed to prison in default of payment of the fine.

fourteen
years of age
may be
imprisoned
or fined.

years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said justices, if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and, if the same be proved, may convict the person accused; and every such offender shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for any period not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of twenty pounds, and in default of payment to be imprisoned in the common gaol or house of correction for any period not exceeding six months, unless such fine and costs be sooner paid, and, if the justices shall so think fit, in any of the said cases, shall be bound to keep the peace and be of good behaviour for any period not exceeding six months from the expiration of such sentence.

If the
magistrates
dismiss the
complaint,
they shall
make out a
certificate to
that effect.

44.⁽⁸⁾ If the justices, upon the hearing of any such case of assault or battery upon the merits, where the complaint was preferred by or on the behalf of the party aggrieved, under either of the last two preceding sections, shall deem the offence

⁽⁸⁾ *Certificate, when to be granted.*—The granting of this certificate is a ministerial act, and not a judicial one, and a magistrate having heard a charge of assault and dismissed it on any one of the grounds stated is bound to grant a certificate; and it need not be applied for or drawn up in the presence of the parties: (*Hancock v. Loves*, 28 L. J. M. C. 196; 33 L. T. Rep. 105.) The certificate need not be granted immediately upon the dismissal of the complaint if not applied for. If, however, it be granted immediately upon being asked for, though the application for it is not until some days after the hearing and dismissal, that is a sufficient compliance with the section: (*Coster v. Hetherington*, 28 L. J. M. C. 198; 33 L. T. Rep. 105.) Where, however, the case was

not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.

45.⁽⁹⁾ If any person against whom any such complaint as in either of the last three preceding sections mentioned shall have been preferred by or on the behalf of the party aggrieved, shall have obtained such certificate, or, having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment or imprisonment with hard labour awarded, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

Certificate of conviction shall be a bar to any other proceedings.

46. Provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstances, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with

These provisions not to apply to certain cases.

dismissed in November and the certificate was not granted until the following January it was held that it was no bar to an action: (*R. v. Robinson*, 12 Ad. & Ell. 672; 10 L. J. M. C. 9.) See this case observed upon by Lord Campbell in *Hancock v. Lowes* (*supra*).

(⁹) *Subsequent indictment for manslaughter*.—Although a conviction of an assault is a bar to an indictment for feloniously stabbing upon the same transaction (*Reg. v. Walker*, 2 M. & R. 446), or for unlawful wounding, or for an assault occasioning actual bodily harm arising out of the same circumstances (*Reg. v. Ehrington*, 9 Cox Crim. Cas. 86; 31 L. J. M. C. 56), it is not a bar to a subsequent indictment for manslaughter upon the death of the man assaulted consequent upon the same assault: (*Reg. v. Morris*, 10 Cox Crim. Cas. 480; 36 L. J. M. C. 84.)

the case in all respects in the same manner as if they had no authority finally to hear and determine the same: provided also, that nothing herein contained shall authorise any justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice.

Assault
occasioning
bodily harm.

47. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and whosoever shall be convicted upon an indictment for a common assault shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour.

Common
assault.

Rape, Abduction, and Defilement of Women.

Rape.

48.⁽¹⁰⁾ Whosoever shall be convicted of the crime of rape shall be guilty of felony, and being

⁽¹⁰⁾ *What amounts to.*—The prosecutrix, with her baby in her arms, was lying in bed between sleeping and waking, and her husband was asleep beside her. She was completely awakened by a man having connexion with her and pushing the baby aside. Almost directly she was completely awakened, she found the man was not her husband, and she awoke him. Held, that a conviction for a rape upon this evidence could not be sustained: (*Reg. v. Barrow*, 19 L. T. Rep. 293; Law Rep. 1 C. C. Res. 156.)

Rape upon an idiot.—Upon an indictment for rape, there must be evidence that the connexion was against the will of the female, or without her consent. In a case, therefore, of alleged rape upon an idiot girl, the only evidence being that of the fact of the connexion and the imbecile state of mind of the girl, and there being no appearance of force having been used, the Court held that there was no case to go to the jury: (*Reg. v. Fletcher*, 14 L. T. Rep. 573.)

convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

49. Whosoever shall, by false pretences, false representations, or other fraudulent means, procure any woman or girl under the age of twenty-one years to have illicit carnal connexion with any man, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Procuring the defilement of girl under age.

50. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Carnally knowing a girl under ten years of age.

51.⁽¹⁾ Whosoever shall unlawfully and carnally

Carnally knowing a

Rape upon an idiot—Sufficiency of evidence.—The prisoner was convicted of a rape upon the prosecutrix, who was an apparent idiot. She proved the act done, and said that it was wrong, but that she said nothing to the prisoner, and that she did not do anything to him, and that she did not like to hurt anybody. The constable told the prisoner that he was charged with committing a rape upon the prosecutrix and against her will. The prisoner, in answer to that, said, "Yes, I did, and I'm very sorry for it." Held, that there was evidence to sustain the conviction: (*Reg. v. Pressy*, 17 L. T. Rep. 295.)

Attempting to commit—Aiding and abetting.—H. was indicted for rape, and W. for aiding and abetting. Both were acquitted of felony, but H. was found guilty of attempting to commit the rape, and W. of aiding H. in the attempt. Held, that W. was properly convicted: (*Reg. v. Hapgood and Wyatt*, 21 L. T. Rep. 679.)

⁽¹⁾ *Carnal knowledge of a girl under twelve—Assault—Indictment.*—An indictment charged that G. in and upon D., a

girl between
the ages of
ten and
twelve.

know and abuse any girl being above the age of ten years and under the age of twelve years shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Attempt to
commit the
last two
offences.

52. Whosoever shall be convicted of any indecent assault upon any female, or of any attempt to have carnal knowledge of any girl under twelve years of age shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Abduction
of a woman
against her
will, from
motives of
lucre.

53. Where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be a presumptive heiress or coheiress, or presumptive next of kin, or one of the presumptive next of kin, to any one having such interest whosoever shall, from motives of lucre, take away or detain such woman

girl above the age of ten, and under the age of twelve, unlawfully did make an assault, and her, the said D., did then unlawfully carnally know and abuse, against the form of the statute. Held, that the indictment contained two charges—one of a common assault, and the other of the statutable misdemeanor, and that the prisoner might be convicted of a common assault upon it: (*Reg. v. Guthrie*, 22 L. T. Rep. 485.)

Carnal knowledge between ten and twelve—Attempt.—Upon an indictment for unlawfully assaulting and having carnal knowledge of a girl between ten and twelve years of age, contrary to the statute, &c., the prisoner may be convicted of the attempt to commit that offence: (*Reg. v. Ryland*, 18 L. T. Rep. 538.)

Girl between ten and twelve—Consent.—An indecent assault on a girl between the ages of ten and twelve, if she is a consenting party, is not an offence punishable at law: (*Reg. v. Johnson*, 12 L. T. Rep. 503; 34 L. J. M. C. 192; 10 Cox Crim. Cas. 114.)

against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she shall have any such interest, or which shall come to her as such heiress, coheiress, or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery in England or Ireland shall upon any information at the suit of the Attorney-General appoint.

Fraudulent abduction of a girl under age against the will of her father, &c.

Offender incapable of taking any of her property.

54. Whosoever shall, by force, take away or detain against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Forcible abduction of any woman with intent to marry her.

Abduction of
a girl under
sixteen
years of age.

55.⁽¹²⁾ Whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the dis-

(12). *What not a taking out of the father's possession.*—The prisoner met a girl under sixteen years of age in a street, and induced her to go with him to a place at some distance, where he seduced her, and detained her for some hours. He then took her back to where he met her, and she returned to her father. Held, in the absence of any evidence that the prisoner knew, or had reason for knowing, or that he believed that the girl was under the care of her father at the time, that a conviction under sect. 55 could not be sustained: (*Reg. v. Hibbert*, 19 L. T. Rep. 799; Law Rep. 1 C. C. Res. 184.)

Taking out of possession of father or mother—Stepfather.—A girl between the ages of sixteen and twenty-one years, entitled to a present interest in landed property, was sent to school by her surviving parent, her mother, who had married again. On returning from school for her Christmas holidays, the girl wished to remain at her mother's and stepfather's, but her mother insisted on the girl abiding by an agreement she had made previously, that when she came back at Christmas she should reside at her grandmother's, who lived in the same town as her mother. The mother, in consequence, refused to allow the girl to stay with her. The girl on this, instead of going to her grandmother's, went to the house of H. R. B., an uncle, and remained with him thence until the 19th of the following January, visiting her mother daily. The latter, when she discovered where her daughter was residing, desired her to come back to her house, but the girl did not go back. On the 19th of January above mentioned, F. B., another uncle of the girl, allured her and took her away with intent to marry her, aided by H. R. B.; and, in fact, F. B. actually married her. F. B. was indicted for fraudulently alluring, taking away, and detaining the girl out of the possession of her mother, with intent to marry her, and H. R. B. was indicted for aiding F. B. in the felony. It was alleged on the part of the prosecution, but denied by the prisoners, that on these facts there was sufficient evidence that F. B. fraudulently allured and took and detained the girl, and that he took her out of the possession of her mother. Held, by a majority of the judges, that the circumstances proved were not in point of fact sufficient to establish that the accused had committed the crime charged in the indictment: (*Reg. v. Burrell*, 33 L. J. M. C. 54; 9 L. T. Rep. 426.)

cretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Child-stealing.

56. Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away or detain, any child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away, or detained as in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping: provided that no person who shall have claimed any right to the possession of such child, or shall be the mother or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof.

Bigamy.

57.⁽¹³⁾ Whosoever, being married, shall marry any other person during the life of the former

⁽¹³⁾ *Onus of proof of first wife or husband being alive at the time of the second marriage.*—On a prosecution for bigamy it is incumbent on the prosecutor to prove that the husband

Offence may
be dealt with
where
offender
shall be
apprehended

Not to
extend to
second
marriages,
&c., herein
stated.

husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour; and any such offence may be dealt with, inquired of, tried, determined, and punished in any county or place in England or Ireland where the offender shall be apprehended or be in custody, in the same manner in all respects as if the offence had been actually committed in that county or place: provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been

or wife, as the case may be, was alive at the date of the second marriage. The existence of the party at an antecedent period may or may not afford a reasonable inference that he or she was alive at the date of the second marriage; but it is purely a question of fact for the jury: (*Reg. v. Lumley*, 20 L. T. Rep. 454; 38 L. J. M. C. 86.)

Knowledge of the first wife being alive—Directions to the jury.—In 1863 the prisoner married Mary Ann Richards, and lived with her about a week, and then left her. It was not proved that he had since seen her. In 1867 he married Elizabeth Evans, his first wife being then alive. On the trial of an indictment for bigamy, the learned judge told the jury that they must be satisfied that the prisoner knew that his first wife was alive at the time of the second marriage. Held, that the direction of the judge to the jury was right, and that it was not necessary to prove affirmatively that at the time of the second marriage the prisoner knew that his first wife was alive: (*Reg. v. Jones*, 21 L. T. Rep. 396.)

divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Attempts to procure Abortion.

58. Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Administering drugs or using instruments to procure abortion.

59.⁽¹⁴⁾ Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any

Procuring drugs, &c., to cause abortion.

⁽¹⁴⁾ *Noxious thing—Supplying—Intent.*—Under sect. 59 of the 24 & 25 Vict. c. 100, the thing supplied with intent to procure the miscarriage of a woman with child, must be noxious in its nature. Therefore, where the thing supplied and taken was of a harmless character, but owing to the imagination of the woman being powerfully acted upon, a miscarriage ensued, it was held that a conviction could not be sustained: (*R. v. Isaacs*, 7 L. T. Rep. 365; 32 L. J. M. C. 52.)

Abortion—Attempt to procure—Supplying drug.—The deceased woman became pregnant by the prisoner and died from the effects of corrosive sublimate, taken by her for the purpose of procuring abortion. The prisoner knowingly procured it for the deceased at her instigation, and under the influence of threats of self-destruction if the means of procuring abortion were not supplied to her. The jury nega-

instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Concealing the Birth of a Child.

Concealing
the birth of
a child.

60.⁽¹⁵⁾ If any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a

tived the fact of the prisoner having administered it, or caused it to be taken by her. Held, that the prisoner was not guilty of murder as an accessory before the fact: (*Reg. v. Tretwell*, 6 L. T. Rep. 333; 31 L. J. M. C. 145.)

Supplying noxious drug.—A person supplying a noxious drug to a woman with the intent that the woman should take it for the purpose of procuring a miscarriage, is guilty of a misdemeanor under this section, although the woman herself did not intend to take it: (*Reg. v. Hillman*, 9 Cox Crim. Cas. 386; Leigh and Cave, 343.)

⁽¹⁵⁾ *Concealing a live child.*—A woman delivered of a child born alive, endeavoured to conceal the birth thereof by depositing the child while alive in a corner of a field, leaving the infant to die from exposure, which it did, and the dead body was afterwards found in the corner. Held, that she could not be convicted of concealing the birth of the child under sect. 60, which relates to the secret disposition of the dead body of a child: (*Reg. v. May*, 16 L. T. Rep. 362.)

What is a concealment.—What is a secret disposition of the dead body of a child within the meaning of sect. 60 is a question for the jury depending on the circumstances of the particular case. Where the dead body of a child was thrown into a field over a wall four and a-half feet high, separating the yard of a public-house from the field, and a person looking over the wall from the yard might have seen the body, but persons going through the yard, or using it in the ordinary way, would not, it was held that this was evidence from which the jury might infer a secret disposition of the body: (*Reg. v. Brown*, 22 L. T. Rep. 484.)

misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour: provided that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

Unnatural Offences.

61. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years. Sodomy and bestiality.

62. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour. Attempt to commit an infamous crime.

63. Whenever, upon the trial for any offence punishable under this act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal Carnal knowledge defined.

knowledge shall be deemed complete upon proof of penetration only.

Making Gunpowder to commit Offences, and searching for the same.

Making or having gunpowder, &c., with intent to commit any felony against this act.

64. Whosoever shall knowingly have in his possession, or make or manufacture, any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any of the felonies in this act mentioned, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Justices may issue warrants for searching houses, &c., in which explosive substances are suspected to be made for the purpose of committing felonies against this act.

65. Any justice of the peace of any county or place in which any such gunpowder, or other explosive, dangerous, or noxious substance, or thing, or any such machine, engine, instrument, or thing, is suspected to be made, kept, or carried for the purpose of being used in committing any of the felonies in this act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching, in the daytime, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, waggon, cart, ship, boat or vessel, in which the same is suspected to be made, kept, or carried for such purpose as hereinbefore mentioned; and every person acting in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining all such gunpowder, explosive, dangerous, or noxious substances, machines, engines, instruments, or things found upon such

search, which he shall have good cause to suspect to be intended to be used in committing any such offence, and the barrels, packages, cases, and other receptacles in which the same shall be, the same powers and protections which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by the act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled “An Act to amend the Law concerning the making, keeping, and carriage of Gunpowder and Compositions of an explosive nature, and concerning the Manufacture, Sale, and Use of Fireworks.”

23 & 24 Vict.
c. 139.

Other Matters.

66. Any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this act mentioned, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

A person loitering at night, and suspected of any felony against this act, may be apprehended.

67. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except murder) shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour; and every accessory after the fact to murder shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years, or to be imprisoned for any term not

Punishment of principals in the second degree, and accessories.

exceeding two years, with or without hard labour ; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanor punishable under this act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Offences
committed
within the
jurisdiction
of the
Admiralty.

68. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place ; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in any such county or place, and the offence shall be averred to have been committed "on the High Seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Hard labour
in gaol or
house of
correction.

69. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Solitary
confinement
and
whipping.

70. Whenever solitary confinement may be awarded for any offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of any

imprisonment, or of any imprisonment with hard labour, which the court may award, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any offence under this act, the court may sentence the offender to be once privately whipped; and the number of strokes, and the instrument with which they shall be inflicted, shall be specified by the court in the sentence.

71.⁽¹⁶⁾ Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any punishment by this act authorised, fine the offender, and require him to enter into his own recognisances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act otherwise than with death the court may, if it shall think fit, require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorised: provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

Fine, and sureties for keeping the peace; in what cases.

72. No summary conviction under this act

No certiorari, &c

⁽¹⁶⁾ The power given by this section to the court to impose a fine in lieu of any other punishment in *all* cases of *misdemeanor* under the act, is certainly a most extensive one, and in effect amounts to a bestowal of unlimited powers of mitigation of punishment, and when we find that unlawfully and maliciously wounding, maliciously administering poison with intent to injure, abandoning a child so that its life shall be endangered, assaulting with intent to commit a felony, carnally knowing a girl between ten and twelve years of age, attempting to commit an unnatural crime, are all misdemeanors under the statute, the powers thus given to impose a fine in lieu of any other punishment looks very like jesting with criminal punishments.

shall be quashed for want of form, or be removed by *certiorari* to any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Guardians and overseers may be required to prosecute in certain cases of offences against this act.

73. Where any complaint shall be made of any offence against section twenty-six of this act, or of any bodily injury inflicted upon any person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony, or an attempt to commit a felony, or an assault with intent to commit a felony, and two justices of the peace before whom such complaint is heard shall certify under their hands that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or place, or, where there are no guardians, by the overseers of the poor of the place, in which the offence shall be charged to have been committed, such guardians or overseers, as the case may be, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians or upon any one of such overseers, shall conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of any court) out of the common fund of the union, or out of the funds in the hands of the guardians or overseers, as the case may be; and, where there is a board of guardians, the clerk or some other officer of the union or place, and, where there is no board of guardians, one of the overseers of the poor, may, if such justices think it necessary for the purposes of public justice, be bound over to prosecute.

Costs of prosecution.

Clerk of guardians may be bound over to prosecute.

74. Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court think fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary cost and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall by affidavit or other inquiry and examination ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

On a conviction for assault the court may order payment of the prosecutor's costs by the defendant.

75. The court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner; and in case such sum shall be so levied the imprisonment awarded until payment of such sum shall thereupon cease.

Such costs may be levied by distress.

76. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93.

Except in London and the metropolitan police district.

manner as if they were incorporated in this act ; provided that nothing in this act contained shall in any manner alter or affect any enactment now in force relating to procedure in the case of any offence punishable on summary conviction within the City of London or the Metropolitan Police District or the recovery or application of any penalty or forfeiture for any such offence.

The costs of the prosecution of misdemeanors against this act may be allowed

77. The court before which any misdemeanor indictable under the provisions of this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony ; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

Act not to extend to Scotland.

78. Nothing in this act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

Commencement of act.

79. This act shall commence and take effect on the first day of November one thousand eight hundred and sixty-one.



THE
Statutes and Parts of Statutes

RELATING TO THE

CRIMINAL LAW,

OTHER THAN

THE CRIMINAL LAW CONSOLIDATION ACTS.

ADMIRALTY COURT JURISDICTION ACT.

(24 VICT. CAP. 10.)

*An Act to extend the Jurisdiction and improve
the Practice of the High Court of Admiralty.—
[17th May, 1861.]*

Sect. 26. The Registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said court; and any person who shall wilfully depose or affirm falsely in any proceeding before the registrar or before any deputy or assistant registrar of the said court, or before any person authorised to administer oaths in the said court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

False oath of
affirmation
deemed
perjury.

CRIMINAL PROCEEDINGS OATH RELIEF ACT.

(24 & 25 VICT. CAP. 66.)

*An Act to give Relief to Persons who may refuse
or be unwilling, from alleged conscientious
Motives, to be sworn in Criminal Proceedings.
[1st August, 1861.]*

WHEREAS it is expedient to grant relief to persons who may refuse or be unwilling, from alleged conscientious motives, to be sworn in criminal proceedings: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

Persons
refusing
from con-
scientious
motives to
be sworn in
criminal
proceedings
to be
permitted to
make a
solemn
affirmation
or decla-
ration.

1.(¹) If any person called as a witness in any court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in the words following : *videlicet*,

“ I *A.B.*, do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is according to my religious belief unlawful ; and I do also solemnly, sincerely, and truly affirm and declare,” &c.

(¹) See, also, 23 & 24 Vict. c. 68, s. 4.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

2. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

Punishment
for making
false
affirmation.

3. This act shall come into operation on the first day of October in the year one thousand eight hundred and sixty-one.

Commence-
ment of act.

DEALERS IN OLD METALS ACT.

(24 & 25 VICT. CAP. 110.)

An Act for regulating the Business of Dealers in old Metals.—[6th August, 1861.]

Sect. 3.⁽¹⁾ In the construction and for the purposes of this act the term “dealer in old metals” shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores, and the term “old metals” shall mean the said articles.

Definition
of terms.

4. It shall be lawful for any justice of the

Penalty on
dealer in

(¹) See, also, 32 & 33 Vict. c. 99, s. 17.

old metals
being in
possession
of stolen
property.

peace, upon complaint made before him, upon oath, that the complainant has reason to believe and does believe that any old metal stolen or unlawfully obtained is kept in any house, shop, room, or place by any dealer in old metals within the limits of the jurisdiction of such justice, to give authority, by special warrant, to any constable or police officer to enter, in the daytime, such house, shop, room, or other place, with such assistance as may be necessary, and to search for and seize all such old metals there found, and to carry all the articles so seized before the justice issuing the said warrant, or some other justice exercising similar jurisdiction, and such justice shall thereupon issue a summons requiring such dealer to appear before two justices, at a time and place to be named in such summons, and if such dealer shall not then and there prove to the satisfaction of such justices how he came by the said articles, or if any such dealer shall be found in possession of any old metal which has been stolen or unlawfully obtained, and on his being taken or summoned before two justices it shall be proved to the satisfaction of such justices that at the time when he received it he had reasonable cause to believe it to have been stolen or unlawfully obtained, then in either of such cases such dealer shall be liable to a penalty not exceeding five pounds, and for any subsequent offence to a penalty not exceeding twenty pounds, or at the discretion of the justices in the case of such second or subsequent offence shall be imprisoned and kept to hard labour for any period not exceeding three calendar months: provided always, that nothing herein contained shall interfere with or affect any proceeding by indictment to which such dealer in old metals may be liable for feloniously and knowingly receiving stolen goods, but no person shall be prosecuted by indictment and proceeded against under this act for the same offence.

5. When any dealer in old metals is convicted of either of the offences aforesaid, it shall be lawful for such justices, or, on proof of such conviction, for any other two justices of the same petty sessional district of a county, or city or borough, on proof of such conviction, to order and direct that such dealer shall be registered at the principal police office of such district or city or borough in a book to be kept by the chief officer of police for the purpose, according to the form No. 1 in the schedule to this act annexed, and from and after such registration such dealer shall be subject to and shall conform to the several regulations hereinafter provided, for such period, not exceeding three years, as such justices shall order; and if such dealer shall during such period be convicted of any offence under this act, the justices so convicting him may order such period to be extended for not more than three years from the time when such period would otherwise expire; and in like manner, whilst such dealer is subject to the regulations of this act, on any further conviction under this act, and as often as such further conviction shall take place, the justices so convicting him may order the period for which he is then subject to such regulations to be extended for not more than three years from the time when such period would otherwise expire: provided always, that where any dealer in old metals who is also a dealer in marine stores within the meaning of the four hundred and eightieth section of the Merchant Shipping Act, 1854, is registered as aforesaid, he shall likewise conform to the regulations contained in the said section of the said act, and shall be liable to the penalties in the said section provided for not conforming to such regulations.

Justices may
order dealer
to be
registered.

SCHEDULE.

No. I.—REGISTER OF DEALERS IN OLD METALS.

| Date of Registration | Date of Conviction. | Period for which to be subject to Regulations of this Act. | Name. | Place of Abode and Business. |
|----------------------|---------------------|--|-------|------------------------------|
| | | | | |

DISCHARGED PRISONERS AID ACT.

(25 & 26 VICT. CAP. 44.)

An Act to amend the Law relating to the giving of Aid to discharged Prisoners.—[17th July, 1862.]

WHEREAS by the thirty-ninth section of an act passed in the session holden in the fourth year of King George the Fourth, chapter sixty-four, intituled “An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales,” and hereinafter referred to as “The Gaol Act,” it is provided that it should be lawful for any one or more of the visiting justices of any prison to which that act extended, from whence any prisoner should be discharged, to direct that such moderate sum of money should be given and paid to any and every such prisoner so discharged who should not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as, in the judgment of such justice or justices, should be

requisite and necessary for such purpose, under all the circumstances attending the case of any such prisoner; and that such sum of money should be paid by the keeper of such prison, to or for the use of such prisoner for the purpose aforesaid, and that all such sums should be provided for, either out of such bequests or benefactions as therein mentioned, or in such manner as is by the Gaol Act directed with respect to the expense of the support and maintenance of the prisoners in the prisons to which such act extends: And whereas divers societies, hereinafter referred to as “Discharged Prisoners Aid Societies,” have been formed in divers parts of England, by persons subscribing voluntarily, for the purpose of finding employment for discharged prisoners, and enabling them by loans and grants of money to live by honest labour: And whereas it is expedient that power should be given to the visiting justices of prisons to give aid under the said act to discharged prisoners through the medium of a Discharged Prisoners Aid Society, in cases where such society has been previously certified by the justices having jurisdiction over such gaol or house of correction, at some court of general or quarter sessions, or at some quarterly sessions held by them, to be a society approved of by them: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. The justices having jurisdiction over any gaol or house of correction to which the Gaol Act extends may, at any court of general or quarter sessions, or at any quarterly sessions, upon the application of any one or more member or members of a Prisoners Aid Society, and after examining the rules of such society, and receiving

Power to
justices to
grant certi-
ficates of ap-
proval of
prisoners’
aid societies;

and to re-
voke or
suspend the
same.

such evidence as they think fit as to the condition of such society, issue a certificate under the hand of their chairman to the effect that such society is approved of by them for the purposes of this act; and they may, at any future court of general or quarter sessions, or at any future quarterly sessions, upon due cause shown, by a writing under the hand of their chairman, revoke or suspend such certificate; and any society in respect of which such certificates as aforesaid has been granted and remains in force shall be deemed to be a "Certified Prisoners Aid Society," and to be entitled to such privileges as are hereinafter mentioned.

Relief may
be afforded
by "certified
prisoners'
aid society."

2. Where a prisoner is discharged from any prison to which the said Gaol Act extends, the visiting justices of such prison, instead of directing that such moderate sum of money shall be paid by the keeper of such prison to or for the use of such prisoner for the purpose aforesaid, may if they shall think fit direct that such sum, not exceeding in any case two pounds, shall be paid to the treasurer of a certified Prisoners Aid Society on their receiving from such society an undertaking in writing, signed by the secretary thereof, that the same shall be applied for the benefit of such prisoner: provided that if it shall not be possible for the society so to apply such sum for the benefit of such prisoner, the same or so much thereof as shall not have been so applied shall be applied by such society for the benefit of such other prisoner or prisoners discharged from the said gaol as the said visiting justices shall direct.

Funds out
of which
repayments
provided.

3. All sums paid to a certified Prisoners Aid Society under this act shall be provided for out of the same funds and in the same manner as is by the said Gaol Act directed with respect to the sums therein authorised to be given or paid as herein-before recited to discharged prisoners.

TRANSFER OF LAND ACT.

(25 & 26 VICT. CAP. 53.)

An Act to facilitate the Proof of Title to, and the Conveyance of, Real Estates.—[29th July, 1862.]

Sect. 105.—If in any proceeding to obtain the registration of any land, or any land certificate or certificate of title, or otherwise in any transaction relating to land which is or is proposed to be put upon the registry, any person acting either as principal or as agent shall, knowingly and with intent to deceive, make or assist or join in or be privy to the making of any material false statement or representation, or suppress, conceal, or assist or join in or be privy to the suppressing, withholding, or concealing from any judge, or the registrar, or any person employed by or assisting the registrar, any material document, fact, or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned for a term not exceeding three years, and either with or without hard labour, or to be fined such sum as the court by which he is convicted shall award: the act or thing done or obtained by means of such fraud or falsehood shall be null and void to all intents and purposes, except as against a purchaser for valuable consideration without notice.

Person making false statement guilty of misdemeanor.

106. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the person who has committed such act.

Ast persons aggrieved by proceeding, &c., for any act declared a misdemeanor.

107. Nothing in this act contained shall entitle any person to refuse to make a complete discovery by answer to any bill in equity, or to answer any

Answers to bills, questions, &c., not admis-

sible in evidence. question or interrogatory in any civil proceeding, in any court of law or equity, or in the Court of Bankruptcy; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any criminal proceeding.

Fraud a misdemeanor 138. If any person fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any order of the Court of Chancery in relation to registered land, or fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any caveat or notice of a charge, or of the erasure from the register or alteration on the register of any caveat or notice of a charge, such person shall be deemed to be guilty of a misdemeanor; and any order procured by fraud, and any act consequent on such order, and any entry, erasure, or alteration so made by fraud, shall be void as between all parties or privies to such fraud.

Punishment. 139. Any person convicted of a misdemeanor under the last preceding section shall be liable to imprisonment for any term not exceeding three years, with or without hard labour, or to be fined such sum as the court by which he is convicted shall think just.

Interpretation of terms 140. In the construction of this act (except where the context or other provisions require a different construction), the word "person" shall include Her Majesty, Her heirs and successors, and the Duke of Cornwall for the time being, and also a body politic or corporate; the word "possession" shall include receipt of the rents and profits; the word "land" shall include messuages, tenements, and hereditaments, corporeal or incorporeal; and the word "incumbrance" shall mean any legal or equitable mortgage in fee or for any

less estate, and also any money secured or charged on land by a trust, or by judgment, decree, or order of any superior court of law or equity, and also any legacy, portion, lien, or other charge whereby a gross sum of money is secured to be paid, and also any annual or periodical charge which by the instrument creating the same, or by any other instrument, is made repurchaseable on payment of a gross sum of money, and also any arrear remaining unpaid of any annual or periodical charge, for payment of which arrear a sale of any land charged therewith might be decreed by a court of equity.

MERCHANT SHIPPING ACT AMENDMENT ACT.

(25 & 26 VICT. CAP. 63.)

An Act to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855," and "The Customs Consolidation Act, 1853."—[29th July, 1862.]

Sect. 16. Any person appointed to any office or service by or under any local marine board shall be deemed to be a clerk or servant within the meaning of the sixty-eighth section of the act of the twenty-fifth year of the reign of Her present Majesty, chapter ninety-six : Punishment for embezzlement in shipping offices.

If any such person fraudulently applies or disposes of any chattel, money, or valuable security received by him whilst employed in such office or service for or on account of any such local marine board, or for or on account of any other public board or department, to his own use or any use or purpose other than that for which the same was paid, entrusted to, or received by him, or fraudu-

lently withholds, retains, or keeps back the same or any part thereof contrary to any lawful directions or instructions which he is required to obey in relation to such office or service, he shall be deemed guilty of embezzlement within the meaning of the said section :

Any such person shall, on conviction of such offence as aforesaid, be liable to the same pains and penalties as are thereby imposed upon any clerk or servant for embezzlement :

In any indictment against such person for such offence it shall be sufficient to charge any such chattel, money, or valuable security as the property either of the board by which he was appointed, or of the board or department for or on account of which he may have received the same; and no greater particularity in the description of the property shall be required in such indictment in order to sustain the same, or in proof of the offence alleged, than is required in respect of an indictment or the subject matter thereof by the seventy-first section of the said last-mentioned act.

Interpreta-
tion of terms

66. The following terms used in the sections of this act hereinafter contained shall have the respective meanings hereby assigned to them, if not inconsistent with the context or subject matter; that is to say,

Report." The word "report" shall mean the report required by the customs laws to be made by the master of any importing ship :

Entry." The word "entry" shall mean the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship :

"Goods." The word "goods" shall include every description of wares and merchandise :

"Wharf." The word "wharf" shall include all wharves, quays, docks, and premises in or upon which

any goods when landed from ships may be lawfully placed :

The word "warehouse" shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed : "Warehouse."

The expression "wharf owner" shall mean the occupier of any wharf as hereinbefore defined : "Wharf-owner."

The expression "warehouse owner" shall mean the occupier of any warehouse, as hereinbefore defined : "Warehouse owner."

The word "shipowner" shall include the master of the ship and every other person authorised to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship. "Ship-owner."

The expression "owner of goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to such lien. "Owner of goods."

NAVAL AND VICTUALLING STORES ACT.

(25 & 26 VICT. CAP. 64.)

An Act for the better Protection of Her Majesty's Naval and Victualling Stores.—[29th July, 1862.]

WHEREAS the existing enactments for the protection of Her Majesty's naval and victualling stores are numerous and complicated, and difficulties have arisen in their application, and it is consequently expedient to reduce into one act and simplify and amend them :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

- | | |
|-------------------------|---|
| Short title. | Sect. 1. This Act may be cited as "The Naval and Victualling Stores Act, 1862." |
| Extent of act. | 2. This Act shall not extend to Scotland or Ireland. |
| Interpretation of terms | 3. In this Act— The term "the Admiralty" shall be taken to mean the Lord High Admiral of the United Kingdom for the time being, or the commissioners for the time being for executing the office of Lord High Admiral : The term "dealer in marine stores" shall be taken to mean a person bound to conform to the regulations of the Merchant Shipping Act, 1854, section four hundred and eighty : The term "dealer in old metals" shall be taken to mean a person answering the description of such a dealer contained in "The Old Metal Dealers Act, 1861" : The term "Her Majesty's yards" shall be taken to mean Her Majesty's dock yards, Her Majesty's victualling yards, and Her Majesty's steam factory yards : The term "constable of the metropolitan force" shall be taken to mean a constable belonging to that force, and being by virtue of the act of the session of the twenty-third and twenty-fourth years of Her Majesty (chapter one hundred and thirty-five), "for the employment of the metropolitan police force in Her Majesty's yards and military stations," employed and autho- |
- 17 & 18 Vict.
c. 104.
- 24 & 25 Vict.
c. 110.
- 23 & 24 Vict.
c. 135.

rised to act in any of Her Majesty's yards and within the limits in that act mentioned.

4. The enactments described in Schedule (A.) to this Act are hereby repealed to the extent therein specified, and only as to Her Majesty's naval and victualling stores; but this repeal shall not extend to Scotland or Ireland, or affect—

Enactments in Schedule (A.) to this act, as to naval and victualling stores, repealed, but not as to Scotland or Ireland.

- (1.) The past operation of any such enactment;
- (2.) Any act done or any right or liability already acquired, accrued, or now existing under or by virtue of any such enactment;
- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence already committed; or
- (4.) The institution or prosecution of any legal proceeding or any other remedy for the ascertaining, enforcing, or recovering of any such liability, penalty, forfeiture, or punishment.

I. MARKED STORES.

Imitation of Marks.

5. The marks mentioned in Schedule (B.) to this act may be applied in or on Her Majesty's naval and victualling stores to denote Her Majesty's property in stores so marked. It shall be lawful for the Admiralty, their contractors, officers, and workmen, and for no other person, to apply the said marks or any of them in or on naval or victualling stores. If any person apply any of the said marks in or on naval or victualling stores contrary to this provision he shall be guilty of a misdemeanor, and shall be liable to imprisonment for not more than one year, with or without hard labour.

Marks in Schedule (B.) to this act appropriated for Her Majesty's use in or on naval and victualling stores.

Imitation of marks a misdemeanor.

Defacing of Marks.

6. If any person, with intent to conceal Her

Obtiteration of marks,

with intent
to conceal
Her Ma-
jesty's pro-
perty in
stores, felony

Majesty's property in any naval or victualling stores, take out, destroy, or obliterate, wholly or in part, any such mark in or on any such stores, he shall be guilty of felony, and shall be liable to imprisonment for not more than two years, with or without hard labour.

Receiving, &c., of marked Stores.

Knowingly
receiving,
&c., marked

7.⁽¹⁾ If any person receive, possess, keep, sell, or deliver any naval or victualling stores marked as

(1) The following opinion has been taken by the Solicitor to the Admiralty, at Plymouth, from one of the Counsel to the Admiralty for that port, on the construction of the new Act for the Amendment of the Law relating to the Protection of Naval Stores :—

Construction of the Naval Stores Act (25 & 26 Vict. c. 64).

Opinion.—Sects. 7 and 13 of 25 & 26 Vict. c. 64, are to be thus construed :

Sect. 7 makes it an indictable misdemeanor to receive, possess, keep, sell, or deliver marked naval stores, *knowing them to be so marked*; and sect. 8 enacts that such knowledge is to be *presumed* in the cases of marine store dealers, dealers in old metal, and persons employed in Her Majesty's service in the dockyards, &c. In all other cases, knowledge of the stores being marked must be proved by evidence, which means that it may be *presumed from the facts* of the case.

If the stores do not exceed 1*l.* in value, the justices are to convict summarily, under the Summary Convictions Act.

If the value exceeds 1*l.*, the justices may still convict summarily, if the prisoner pleads guilty.

Sect. 13 creates a different offence. Here the crime is the *having or conveying* by any person of such stores, reasonably suspected of having been stolen or unlawfully obtained. The defendant is to be called upon to account, to the satisfaction of the justices, how he became possessed of such stores. Failing to do so, he is liable to a penalty not exceeding 5*l.*, or imprisonment not exceeding two months.

The defendant may relieve himself by stating from whom he obtained the stores in question; and then the person so charged by him is to be proceeded against in like manner, and thus backwards until there is a possessor found who cannot account for such possession.

The possession of a servant is to be the possession of his employer.

Possession is defined by the third provision of sect 13. If the justices are of opinion that defendant had possession of such stores, and reasonable cause for believing them to be unlawfully obtained, he is to be deemed to have had posses-

aforesaid, knowing them to be so marked, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for not more than one year, with or without hard labour.

stores, &
misde-
meanor.

8. Where the person charged with such a misdemeanor is a dealer in marine stores or in old

Knowledge
of stores
being

sion at the time and place where they were found. This was designed to meet the objection taken in *Sleep's* case, and approved by Baron Martin, that the possession by the railway company was not a possession by the purchaser, and that, to constitute the offence, the possession must be actual, and not constructive. It is now enacted, that if the defendant is proved ever to have been in possession of the stores in question, know them to be marked, the possession is still to be deemed his, wheresoever they may be found or seized.

The 7th section differs from the 13th in this, that the 7th section uses the term "possess," and the 13th section the term "having." But I am of opinion that no distinction was designed or will be recognised between these two terms *beyond this*—that "possession" may, by the definition above stated, be constructive, viz., at any place where the stores are found, if they have been at any time in the defendant's actual possession, whereas "having" means *actual* possession; that is to say, in the custody, care or control of the defendant at the time when they were found.

In order to convict summarily under sect. 13 it will be necessary to prove—

- 1st. That defendant *had* or *conveyed* stores marked as in the schedule is described; and,
- 2nd. That they were stolen or unlawfully obtained, or are reasonably suspected of having been stolen or unlawfully obtained.

On proof of this the justices will call on the defendant to account to their satisfaction how he came by such stores.

If he shall account for it by stating that he received them from some other person, or that he had them only as carrier, agent, or servant, employed by some other person to carry them,

The justices should adjourn the hearing, and cause such other person to be summoned to answer the charge. That person in his turn may relieve himself in like manner, when the same process will be renewed, taking care to adjourn all the cases until the final issue.

If no such satisfactory account is given by the defendant, or it proves to be false on the appearance or otherwise of the party inculpated by him—the justices will convict.

EDW. WM. COX.

1, Essex-court, Temple, 25th Aug. 1862.

marked presumed against dealers or persons employed in yards, but to be proved in other cases.

metals, or a person employed in any of Her Majesty's yards, knowledge on his part that the stores to which the charge relates were at the time of the commission of the offence marked as aforesaid shall be presumed, until the contrary is shown; in other cases evidence of such knowledge shall be necessary to support the charge.

No conviction where proof that stores were lawfully come by.

9. Provided always, that no person shall be liable to be convicted of such a misdemeanor who shows (whether such knowledge as aforesaid is presumed or proved against him or not) that he came by the stores to which the charge relates lawfully, and without reasonable cause for believing that the person (if any) through whom he came by the same had not come by the same lawfully.

Summary trial of receivers, &c., in certain cases, under Criminal Justice Act, 18 & 19 Vict. c. 126.

10. The provisions of the Act of the session of the eighteenth and nineteenth years of Her Majesty (chapter one hundred and twenty-six) "for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases," shall apply in the case of a person charged with such a misdemeanor in manner following :

- (1.) Where, in the judgment of the justices at such petty sessions as in that act mentioned, the value of the stores to which the charge relates does not exceed one pound, section one of that act, with all provisions relative thereto, shall apply :
- (2.) Where, in the judgment of such justices, such value exceeds one pound, section three of that act, with all provisions relative thereto, shall apply.

II. STORES MARKED OR UNMARKED.

Creeping, sweeping, or dredging.

No unauthorised person

11. It shall not be lawful for any person

(except a person in Her Majesty's service or in the employment of the Admiralty, or a constable of the metropolitan police force), without permission in writing given by the Admiralty or by some person authorised by the Admiralty in that behalf, to creep, sweep, or dredge for stores lost or supposed to be lost in the sea or any tidal water within the distance of one hundred yards from any vessel belonging to Her Majesty or in Her Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any moorings belonging to Her Majesty, or from any of Her Majesty's yards. If any person creep, sweep, or dredge for stores contrary to this provision he shall be liable, on summary conviction, to a penalty of not more than five pounds.

to creep, sweep, or dredge for stores within 100 yards of dockyards, &c.

Arrest of Offenders, Vessels, &c.

12. A constable of the metropolitan police force may, within the yard and limits for which he is sworn, stop, search, and detain any vessel, boat, or carriage in or on which there is reason to suspect that any of Her Majesty's naval or victualling stores, stolen or unlawfully obtained, may be found, or any person reasonably suspected of having or conveying any such stores stolen or unlawfully obtained.

Policemen of metropolitan force may stop suspected persons, &c.

13. If any person be brought before two or more justices at petty sessions charged with having or conveying any of Her Majesty's naval or victualling stores stolen or unlawfully obtained, or reasonably suspected to have been stolen or unlawfully obtained, the following provisions shall take effect and apply :

Power of justices at petty sessions in relation to stores stolen or unlawfully obtained, &c.

- (1.) If such person do not give an account to the satisfaction of the justices how he came by such stores he shall be deemed guilty of a misdemeanor, and, on summary

conviction thereof before two or more justices at petty sessions shall be liable to a penalty of not more than five pounds, or to imprisonment for not more than two months, with or without hard labour:

- (2.) If he declare that he received such stores from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, two or more justices at petty sessions may cause every such other person, and every former or pretended purchaser or other person through whose possession the same have or are declared to have passed, to be brought before them and examined, and may examine witnesses on oath touching the same :
- (3.) If it appear to two or more justices at petty sessions that any person has had possession of such stores (for which purpose the possession of a carrier, agent, or servant shall be deemed to be the possession of his employer), and had reasonable cause for believing that the same had been stolen or unlawfully obtained, such person shall be deemed to have had possession thereof at the time and place when and where they were found or seized, and to be guilty of a misdemeanor, and, on conviction thereof before two or more justices at petty sessions, shall be liable to a penalty of not more than five pounds, or to imprisonment for not more than three months, with or without hard labour.⁽²⁾

Searches under Warrants.

14. Where information on oath is given to a

Search
warrant on

⁽²⁾ See note (1), p. 250.

justice of the peace that there is reasonable cause to believe, and that the informant believes, that some of Her Majesty's naval or victualling stores, marked as aforesaid, or (whether marked or not) stolen or unlawfully obtained, are in a house or place within the jurisdiction of such justice, he may issue a search warrant to a constable.

information
on oath.

15. Every such search warrant shall be a sufficient authority for the constable to whom the same is directed to enter, in the daytime, or by night, if power for that purpose be given by the warrant, with such assistance as may be found necessary, into such house or place, and there to search for naval or victualling stores, and if upon such search any such naval or victualling stores be found, then to seize the same, and either to convey the same before a justice of the peace, or to guard them on the spot, or otherwise dispose of them in a place of safety, until further proceedings can be taken in relation thereto.

Effect of
search
warrant.

16. Where under any such search warrant any naval or victualling stores, appearing or reasonably suspected to belong or to have belonged to Her Majesty, are found in the possession or keeping of a dealer in marine stores or in old metals, or of a person employed in any of Her Majesty's yards, and such dealer or person does not prove that he came by the same lawfully, and without reasonable cause for believing that the person (if any) through whom he came by the same had not come by the same lawfully, such dealer or person, on summary conviction before two or more justices at petty sessions, shall be liable for the first offence to a penalty of not more than five pounds, and for a second or other subsequent offence to a penalty of not more than twenty pounds, or imprisonment for not more than three months, with hard labour.

Dealers in
marine
stores and in
old metals to
account for
possession of
stores found
on search.

III. GENERAL PROVISIONS.

Procedure.

Parts of
24 & 25 Vict.
c. 96
(Larceny),
incorporated

17. Subject and without prejudice to the application by this act of the said act of the session of the eighteenth and nineteenth years of Her Majesty, and to the other express provisions of this act, such of the provisions of the act of the last session of Parliament (chapter ninety-six), "to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences," as are mentioned in Schedule (C.) to this act, shall be incorporated with this act, and shall for the purposes of this act be read as if they were here re-enacted.

Criminal
possession.

18. For the purposes of this act naval or victualling stores shall be deemed to be in the possession or keeping of any person, if he have them in his personal possession or keeping, or if he knowingly and wilfully have them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same be so had for his own use or for the use or benefit of another.

Saving for
indictment.

19. Nothing in this act shall be taken to prevent any person from being indicted for any indictable offence made punishable on summary conviction by this act, or to prevent any person from being liable under any other act, or otherwise, to any other or higher penalty or punishment than is provided for any offence by this act, but so that no person be punished twice for the same offence.

Admiralty
alone to pro-
secute.

20. It shall not be competent for any person, other than the Admiralty, their officers, solicitors, or agents, to institute or carry on under this act any prosecution by way of summary proceeding or

otherwise for any offence by this act made felony or misdemeanor or made punishable on summary conviction.

Application of pecuniary Penalties.

21. Notwithstanding anything in any act relating to municipal corporations or to the metropolitan police force or in any other act contained, any pecuniary penalty or other moneys recovered under this act shall be paid or applied as the Admiralty shall direct.

Penalties &c., to be applied under orders of Admiralty.

Dealers in old Metals.

22. Every conviction under this act of a dealer in old metals shall, for the purposes of registration and its consequences under The Old Metal Dealers Act, 1861, be equivalent to a conviction under that act.

Effect of conviction of dealers in old metals under this act.

Metropolitan Police.

23. Subject and without prejudice to the express provisions of this act, all enactments relative to the powers, duties, privileges, and responsibilities of the metropolitan police force when acting within the metropolitan police district shall, in relation to offences and other matters connected with naval and victualling stores belonging to Her Majesty, or appearing or reasonably suspected to belong or to have belonged to Her Majesty, extend and apply to constables of the metropolitan force when acting within the yards and limits for which they are sworn, and such enactments shall for the purposes of this act be read as if they were here re-enacted.

Incorporation of provisions of Metropolitan Police Force Acts.

SCHEDULES.

SCHEDULE (A.)

ENACTMENTS repealed as to Her Majesty's Naval and Victualling Stores except as to Scotland and Ireland.

| Session and Chapter. | Title. | Extent of Repeal. |
|------------------------|--|---|
| 9 & 10 Will. 3, c. 41. | An Act for the better preventing the embezzlement of His Majesty's stores of war, and preventing cheats, frauds, and abuses in paying seamen's wages. | Sections one, two, four, five, and eight. |
| 9 Geo. 1, c. 8. | An Act for continuing some laws, and reviving others therein mentioned, for exempting apothecaries from serving parish and ward offices, and upon juries; and relating to jurors; and to the payment of seamen's wages, and the preservation of naval stores, and stores of war; and concerning the militia and trophy money; and against clandestine running of uncustomed goods, and for more effectual preventing frauds relating to the customs, and frauds in mixing silk with stuffs to be exported. | Sections three, four, and five. |
| 17 Geo. 2, c. 40. | An Act to continue the several laws therein mentioned for preventing theft and rapine on the northern borders of England; for the more effectual punishing wicked and evil-disposed persons going armed in disguise, and doing injuries and violences to the persons and properties of His Majesty's subjects, and for the more speedy bringing the offenders to justice; for continuing two clauses to prevent the cutting or breaking down the bank of any river, or sea bank, and to prevent the malicious cutting of hop-binds; and for the more effectual punishment of persons maliciously setting on fire any mine, pit, or delph of coal, or cannel coal; and of persons un- | Section ten. |

SCHEDULE (A.)—*continued.*

| Session and Chapter. | Title. | Extent of Repeal. |
|------------------------|--|-------------------|
| | lawfully hunting or taking any red or fallow deer in forests or chaces, or beating or wounding the keepers or other officers in forests, chaces, or parks; and for granting a liberty to carry sugars of the growth, produce, or manufacture of any of His Majesty's sugar colonies in America, from the said colonies directly to foreign parts in ships built in Great Britain, and navigated according to law; and to explain two acts relating to the prosecution of offenders for embezzling naval stores, or stores of war; and to prevent the retailing of wine within either of the universities in that part of Great Britain called England without licence. | |
| 39 & 40 Geo. 3, c. 89. | An Act for the better preventing the embezzlement of His Majesty's naval, ordnance, and victualling stores. | The whole. |
| 54 Geo. 3, c. 60. | An Act for the better preventing the embezzlement of His Majesty's cordage. | The whole. |
| 54 Geo. 3, c. 159. | An Act for the better regulation of the several ports, harbours, roadsteads, sounds, channels, bays, and navigable rivers in the United Kingdom; and of His Majesty's docks, dockyards, arsenals, wharfs, moorings, and stores therein; and for repealing several acts passed for that purpose. | Section ten. |
| 55 Geo. 3, c. 127. | An Act to repeal an Act of the fifty-third year of His present Majesty, for preventing the embezzlement of stores; and to extend the provisions of the several acts relating to His Majesty's naval, ordnance, and victualling stores to all other public stores. | The whole. |

SCHEDULE (A.)—continued.

| Session and Chapter. | Title. | Extent of Repeal. |
|-----------------------|---|----------------------|
| 56 Geo. 3, c. 80. | An Act to enable the principal officers and commissioners of His Majesty's navy resident on foreign stations to grant certificates of stores or goods which may be sold by such officers or commissioners at such foreign stations. | The whole. |
| 4 Geo. 4, c. 53. | An Act for extending the benefit of clergy to several larcenies therein mentioned. | The whole. |
| 2 & 3 Will. 4, c. 40. | An Act to amend the laws relating to the business of the civil departments of the navy, and to make other regulations for more effectually carrying on the duties of the said departments. | Section thirty-four. |

SCHEDULE (B.)

MARKS appropriated for Her Majesty's use in or on Naval and Victualling Stores.

| Stores. | Marks. |
|--|--|
| (1.) Hempen cordage and wire rope | Coloured worsted threads laid up with the yarns and the wire respectively. |
| (2.) Canvas, fearnought, hammocks, and seamen's bags ... | A blue line in a serpentine form. |
| (3.) Buntin | A double tape in the warp. |
| (4.) Candles | A blue cotton thread in each wick. |
| (5.) Timber, metal, and other naval or victualling stores not before enumerated | The broad arrow. |

SCHEDULE (C.)

PARTS of the Larceny Act of 1861 incorporated with this act.
Sections 99, 100, 103, 105, 107 to 113, both inclusive, and 115 to 121 both inclusive.

JURISDICTION IN HOMICIDES ACT.

(25 & 26 VICT. CAP. 65.)

An Act for the more speedy Trial of certain Homicides committed by persons subject to the Mutiny Act.—[29th July, 1862.]

WHEREAS it is expedient that persons subject to the present or any future Mutiny Act who shall be guilty of the murder or manslaughter of any person subject to the said act or acts should be brought to speedy punishment, and that the offences of such persons should in certain cases be inquired of and tried with all convenient speed, and that the inquiry, trial, and punishment should in certain cases be more speedy than the usual course of practice in respect of the times of issuing Her Majesty's commissions of oyer and terminer or gaol delivery will allow : And whereas it would contribute to the more speedy punishment of persons guilty thereof, and to the maintenance of good order and military discipline, if, when charged with murder or manslaughter committed in England or Wales, and out of the jurisdiction of the Central Criminal Court, such persons were rendered liable to be indicted and tried at the Central Criminal Court, and if when charged with murder or manslaughter committed in Ireland and elsewhere than in the county of the city of Dublin or the county of Dublin such persons were rendered liable to be indicted and tried before and by the commissioners appointed by virtue of any commission of oyer and terminer or of gaol delivery under the great seal of Ireland for the county of the city of Dublin : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

present Parliament assembled, and by the authority of the same, as follows :

The Queen's Bench or a judge may order certain prisoners to be indicted and tried under the provisions of this act.

Sect. 1. Whenever any person shall have been committed for any murder or manslaughter committed or supposed to have been committed at any place in England or Wales, and out of the jurisdiction of the Central Criminal Court, or at any place in Ireland other than the county of the city of Dublin or the county of Dublin, and it shall appear to Her Majesty's Court of Queen's Bench in that part of the United Kingdom wherein the said offence was committed or supposed to have been committed, in term time, or to any judge thereof, or of any of Her Majesty's superior courts of common law in the same part of the United Kingdom, in vacation, that the said person (hereinafter called the prisoner) was at the time of the commission or supposed commission of the said murder or manslaughter subject to the present or any future Mutiny Act, and that the person (hereinafter called the deceased) for the murder or manslaughter of whom the prisoner shall have been committed was at the time last aforesaid subject to the said act or acts, it shall be lawful for such Court of Queen's Bench in term time, or for such judge in vacation, without the prisoner being brought or appearing in person before the said court or judge, upon the application of Her Majesty's principal Secretary of State for the War Department, and upon his certificate in writing, in the form numbered 1 in the schedule to this act annexed, or to the like effect, duly signed, that it would contribute to the maintenance of good order and military discipline if the said prisoner were to be indicted and tried under the provisions of this act, to order that the said prisoner shall be indicted and tried under the provisions of this act, and such order may be in one of the forms

numbered 2 in the schedule to this act annexed, or to the like effect.

2. Whenever any such orders shall have been made, the gaoler or keeper of any gaol or house of correction in which the said prisoner shall be confined shall forthwith upon the delivery to him of an office copy of such order, without writ of habeas corpus or other writ for that purpose, cause such prisoner, with his commitment and detainer, to be safely removed to Her Majesty's gaol of Newgate in the city of London if the said prisoner shall be confined in England or Wales, and to Her Majesty's gaol called the Richmond Bridewell in the county of the city of Dublin if the said prisoner shall be confined in Ireland, and thereupon the keeper of such gaol shall receive such prisoner into his custody in such gaol, there to remain until he shall be delivered by due course of law; and the justice or coroner by whom the prisoner was committed, or any other person having the custody or possession thereof, shall forthwith upon the delivery to him of an office copy of such order transmit any recognisances, depositions, examinations, or informations relating to the murder or manslaughter mentioned in such order which shall be in his custody or possession to the proper officer of the court at and before which the prisoner shall be rendered liable to be indicted under the provisions of this act, to be by him kept among the records of the court.

And upon such order the prisoner shall be removed to the gaol of Newgate in London or the Richmond Bridewell in Dublin, and the depositions, &c. returned to the court at which the prisoner is to be indicted.

3. Whenever any prisoner shall have been removed to the said gaol of Newgate in the city of London under the provisions of this act, the murder or manslaughter of the deceased by the prisoner may be inquired of, heard, and determined, and the prisoner may be indicted, arraigned, tried, and convicted for the murder or manslaughter of the deceased, in the same manner in all

A prisoner removed may be indicted and tried in London or Dublin.

respects as if such murder or manslaughter had been committed within the jurisdiction of the Central Criminal Court; and whenever any prisoner shall have been removed to the Richmond Bridewell in the county of the city of Dublin under the provisions of this act, the murder or manslaughter of the deceased by the prisoner may be inquired of, heard, and determined, and the prisoner may be indicted, arraigned, tried, and convicted for the murder or manslaughter of the deceased, in the same manner in all respects as if such murder or manslaughter had been committed in the county of the city of Dublin.

A certificate of his removal under this act and of the cause of his commitment shall be endorsed on the indictment.

4. Whenever any prisoner so removed to one of the said gaols shall be indicted under the provisions of this Act, an office copy of the before-mentioned order of the Court of Queen's Bench, or of a judge, shall be delivered to the proper officer of the court at and before which the prisoner shall be rendered liable to be indicted under the provisions of this act, and such officer shall thereupon, by indorsement on the back of the bill of indictment, before its presentment by the grand jury, or by direction of the justices, judges, or commissioners of the court before whom such indictment shall be tried, or any two or more of them, at any other time, certify that the prisoner was committed for the murder or manslaughter of the deceased, and was removed to the gaol of Newgate or the Richmond Bridewell, as the case may be, under the provisions of this act; and such indorsement, which may be in the form numbered 3 in the schedule to this act annexed, or to the like effect, and which may be amended by the said last-mentioned justices, judges, or commissioners, or any two or more of them, at any time and in such manner, and as often as to them shall seem fit, shall be conclusive proof

that the said prisoner was committed for the murder or manslaughter of the deceased, and was removed to the said gaol of Newgate or the said Richmond Bridewell under the provisions of this act; and such indorsement shall not constitute or be deemed or taken to be a portion of the indictment.

5. Whenever any indictment found under the provisions of this act shall be amended in any manner, the before-mentioned indorsement thereon shall, if it be necessary, be amended in the like manner.

When indictment is amended the indorsement is to be also amended.

6. A prisoner committed for murder may be indicted under the provisions of this act for manslaughter, and a prisoner committed for manslaughter may be indicted under the same provisions for murder.

Indictment need not follow the commitment.

7. It shall not be lawful for any person, either by himself or his counsel, to take any objection, either in the court at, before, or by which the prisoner shall be indicted, arraigned, tried, convicted, or sentenced under the provisions of this act, or in any court of error, to any order of the said Court of Queen's Bench or of any judge, or to any other proceeding under or by virtue of which the prisoner shall have been removed to the gaol of Newgate or the Richmond Bridewell; and the form of the indictment under the provisions of this act shall be the same as that of indictments for murder or manslaughter committed within the jurisdiction of the court at and before which such prisoner shall be indicted under the provisions of this act; and it shall not be necessary to prove on the trial of the prisoner that either the prisoner or the deceased was or were at the time of the commission or supposed commission of the said murder or manslaughter subject to the provisions of any mutiny act; and

No objection to be taken to any order, and no proof to be required of the subjection of any person to the Mutiny Act.

the prisoner shall not be acquitted by reason only of its appearing that the prisoner or the deceased was not or were not at the time last aforesaid subject to the provisions of any mutiny act.

Any person convicted may be sentenced to be punished either in the county where the offence was committed or within the jurisdiction of the court by which he shall be tried.

8. When any person shall have been convicted of any offence upon the trial of any indictment found under the provisions of this act, it shall be lawful for the justices, judges, or commissioners of the court before which any such conviction shall have taken place, or for any two or more of them, or, in case sentence shall not then be passed, for the justices, judges, or commissioners of the said court, or for any two or more of them, at any subsequent sessions of the said court, to order and adjudge such convict to be punished according to law at any place either within the jurisdiction of the said court, or within the county or place where such offence shall have been committed or supposed to have been committed; and in cases where such justices, judges, or commissioners, or any two or more of them, shall order such convict to be punished in such county or place, it shall be lawful for such justices, judges, or commissioners, or any two or more of them, after passing sentence upon such convict, to make an order commanding the keeper of the gaol of Newgate or of the Richmond Bridewell to cause such convict to be delivered into the custody of the gaoler or keeper of the gaol or house of correction in such county or place, together with such order, and commanding such gaoler or keeper to receive such convict into his custody in such gaol or house of correction, and him there safely to keep until such sentence shall have been executed upon such convict according to law, or until he shall be otherwise delivered by due course of law, and also to make an order commanding the sheriff of such county or place to execute such sentence upon such

convict within such county or place according to law in the same manner as if he had been tried and received such sentence in such county or place; and every such sheriff, gaoler, and keeper respectively is hereby commanded to perform and execute according to law each and everything which he shall be commanded to perform and execute by any such order; and the several forms in the schedule to the act made and passed in the nineteenth year of Queen Victoria, intituled "An Act to empower the Court of Queen's Bench to order certain Offenders to be tried at the Central Criminal Court," contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law, and in the case of any order directed to any sheriff, and commanding him to execute any sentence, it shall be sufficient to deliver such order either to such sheriff or to his under sheriff.

9. Every recognizance which shall have been entered into for the prosecution of the prisoner, and every recognizance of any witness to give evidence against him for the said offence, shall, in case any such order shall be made as is mentioned in the first section of this act, be obligatory on each of the parties bound by such recognizance to prosecute and give evidence, and to do all other things mentioned with reference to the said inquiry and trial at the court at or before which the prisoner shall be indicted or tried under the provisions of this act, in like manner as if such recognizance had been originally entered into for prosecuting such offence, or giving evidence, or doing other things before the said last-mentioned court; provided that notice in writing shall have been given either personally, or by leaving the same at the place of residence as of which the parties bound by such recognizance are therein described, to appear before the said last-mentioned court upon the inquiry into and trial of the said

On notice given by prosecutor, recognizances to bind parties to give evidence at the inquiry and trial.

offence; and the prosecutor is hereby required, on notice given to him that such order as is mentioned in the first section of this act has been made, to give such notice or notices in writing as are in this section mentioned.

Power to
compel wit-
nesses to
attend trials

10. Whenever any indictment shall have been found at any court under the provisions of this act, it shall be lawful for the said court to issue process to compel the attendance of witnesses, as well on the part of the prosecution as on the part of the defence, on the trial of such indictment, in like manner as in cases of indictments found at the said court for offences committed within the jurisdiction of the said court; and every such process shall and may be lawfully executed at any place in that part of the United Kingdom wherein the gaol to which the prisoner shall have been removed under the provisions of this act shall be situate.

Expenses of
prosecution
and rewards
may be
ordered to
be paid.

11. Whenever any indictment shall have been found at any court under the provisions of this act, it shall be lawful for the said court to order such expenses of the prosecutor and witnesses, and such other expenses, and such of the several rewards payable in pursuance of any statute made or to be made as to such court may seem reasonable and sufficient, to be paid forthwith by the proper officer of the said court, and such moneys shall be repaid to the said officer by the same persons who would have been liable to pay the same, as if such court were holden under commissions of oyer and terminer and gaol delivery for the county or place in which the prisoner was committed.

Power to
order pay-
ment of
expenses of
prisoner's
witnesses.

12. Whenever any prisoner shall be tried at any court under the provisions of this act, it shall be lawful for the justices, judges, or commissioners of the said court before whom any

such prisoner shall be tried, or for any two or more of them, if it shall seem reasonable so to do, to order the payment of the expenses of the witnesses on the part of the defence, and such payment shall be made accordingly in the same manner in all respects as if such witnesses were witnesses on the part of the prosecution; and the commissioners of Her Majesty's Treasury shall, upon receipt of such last-mentioned order, and out of any moneys provided by Parliament for law charges in England or Ireland, as the case may be, repay such sum or sums as shall be therein specified to the person who shall have paid the same.

13. Whenever any such order shall have been made as is mentioned in the first section of this act, it shall not be necessary for any purpose whatsoever to prove that the prisoner has been duly removed to the gaol of Newgate or the Richmond Bridewell under the provisions of this act, or that he was committed for the murder or manslaughter of the deceased; and no evidence or proof to the contrary shall be admitted: And every verdict and judgment which shall be given upon any indictment tried under the provisions of this act, shall be deemed as good, valid, and sufficient in law as if the offence charged in such indictment had been actually committed within the jurisdiction of the said court before which such indictment shall be tried.

No proof to be required of due removal of prisoner.

Verdicts and judgments to be valid.

14. Whenever any person shall have been removed into the custody of the said keeper of the said gaol of Newgate or of the Richmond Bridewell under the provisions of this act, such person shall, without writ of habeas corpus or other writ for that purpose, be removed into and from the court at or before which such indictment shall be found, tried, or proceeded upon, when and as often as it may be necessary, by

The prisoner may be removed to and from the Central Criminal Court as often as necessary.

the keeper of the said goal of Newgate or of the Richmond Bridewell, with his commitment and detainer, in order that he may be tried, sentenced, or otherwise dealt with according to law ; and such removal shall not be deemed an escape.

Court before which indictment found to have the same authority as if the offence had been committed within its jurisdiction.

15. Whenever any indictment shall have been found under the provisions of this act, the justices, judges, or commissioners of the court at or before which such indictment shall be found, tried, or proceeded upon for the time being, or any two or more of them, shall possess the same power, jurisdiction, and authority as to all matters and things whatsoever as if the offence charged in the said indictment had actually been committed within the jurisdiction of the said court : and every such offence may be dealt with, tried, and determined by and before such justices, judges, or commissioners, or any two or more of them in the same manner in all respects as if the same had actually been committed within the jurisdiction of the said court : provided that nothing in this section contained shall limit or lessen any power, jurisdiction, or authority conferred upon the said justices, judges, or commissioners, or any two or more of them, by this act.

Sects. 21, 27, and 28 of 19 Vict. c. 16, extended to this act.

16. The provisions of the twenty-first section of the said act made and passed in the nineteenth year of Her Majesty Queen Victoria shall apply to every prisoner removed to any gaol under the provisions of this act, in the same manner in all respects and for all intents and purposes as if such prisoner had been so removed as in any of the preceding sections of the said act is mentioned, and as if that section had been re-enacted herein with reference to prisoners removed to any gaol under the provisions of this act ; and where any person shall have been removed to any gaol under the provisions of this act, the provisions of the

twenty-seventh and twenty-eighth sections of the same act shall apply in the same manner in all respects as in the case where any person shall have been removed or committed to the said gaol of Newgate under the provisions of the said act.

17. Whenever any prosecutor and witnesses in any case where any indictment shall have been found under the provisions of this act shall appear before the court at or before which such indictment shall be found, tried, or proceeded upon, it shall be lawful for such court, from time to time and as often as to the same court shall seem fit, to require such prosecutor and witnesses to enter into such recognisance in such sum of money, and with such condition as to appearance at the said court, and otherwise, as to the said court shall seem fit.

Prosecutor and witnesses may be bound by recognizances to appear again before the said court.

18. It shall be lawful for Her Majesty, by and with the advice of Her most honourable privy council, from time to time to make rules and regulations touching the said gaol of Newgate, or any other gaol or prison, and the government and keeping thereof; and it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of the privy council, from time to time to make rules and regulations touching the said Richmond Bridewell for the purposes of this act, and touching the alteration of any commission, writs, precepts, or other proceedings whatsoever for carrying into effect the purposes of this act; and all such rules and regulations shall be of the like force and effect as if the same had been made by authority of Parliament, and shall be notified in the *London* or *Dublin Gazette*, or in such other manner as Her Majesty, by and with the advice of Her most honourable privy council, shall think fit to direct.

Her Majesty in council may make rules for purposes of this act.

Act not to
affect any
peer.

19. Nothing in this act contained shall render any person claiming the privilege of peerage triable under the provisions of this act.

Interpreta-
tion of
terms.

20. In the construction of this act the words "present Mutiny Act" shall be understood to mean the act made and passed in this present Parliament, intituled "An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters;" and the words "future Mutiny Act" shall be understood to mean any act hereafter to be made and passed for the purposes and with the intents and objects of the present Mutiny Act, or for the like purposes, and with the like intents and objects.

Short title.

21. In citing this act in any instrument, document, or proceeding it shall be sufficient to use the expression "The Jurisdiction in Homicides Act, 1862."

SCHEDULE referred to in the foregoing Act.

1. *Form of Certificate mentioned in the First Section.*

I, the undersigned, Her Majesty's principal Secretary of State for the War Department, having been credibly informed that [name or names of prisoner or prisoners] lately committed for the murder [or manslaughter] of [name of person killed] deceased, and now confined in the gaol [house of correction] at , in the county of , is a person [are persons] subject to the Mutiny Act, and that the said [name of person deceased] deceased was at the time of the alleged murder [or manslaughter] also subject to the said act, and that the said murder or supposed murder [or manslaughter or supposed manslaughter] was committed in England or Wales, and out of the jurisdiction of the Central Criminal Court [or in Ireland and elsewhere than in the county of the city of Dublin, in the county of Dublin,] and having been credibly informed of the circumstances relating to the said alleged crime, and deeming it expedient that a more speedy trial of the said [name or names of prisoner or prisoners] should be had than the usual course of practice allows, do hereby certify my belief that it would contribute to the maintenance of good order and military discipline if

the said [name or names of prisoner or prisoners] were to be indicted and tried under the provisions of the Jurisdiction in Homicides Act, 1862.

Given under my hand this day of , A.D.

[signature of the said Secretary of State.]

2. *Form of Order of the Court of Queen's Bench mentioned in the First Section.*

In Her Majesty's Court of Queen's Bench. [Name of term.]
Term A.D. [Year of our Lord].

Whereas it appears by the affidavit [or affidavits] of [name or names of deponent or deponents], that [name or names of prisoner or prisoners], now in the custody of the gaoler or keeper of the gaol [or house of correction] at , in the county of , was [or were] committed for the murder [or manslaughter] of [name of deceased] deceased, and that as well the said [name or names of prisoner or prisoners] as the said [name of deceased] deceased were at the time of the commission or supposed commission of the said murder [or manslaughter] subject to the Mutiny Act: Now thereupon, and on the application and certificate of Her Majesty's principal Secretary of State for the War Department, it is ordered, that the said [name or names of prisoner or prisoners] be indicted and tried under the provisions of the Jurisdiction in Homicides Act, 1862.

By the Court.

2. *Form of Order of a Judge mentioned in the First Section.*

Whereas it appears [follow the last preceding form as far as the words "Secretary of State for the War Department"] I do order that the said [name or names of prisoner or prisoners] be indicted and tried under the provisions of the Jurisdiction in Homicides Act, 1862. Given under my hand in vacation, this day of , A.D. [Year of our Lord].

[Signature of judge.]

3. *Form of Indorsement mentioned in the Fourth Section.*

I certify that [name or names of prisoner or prisoners] was [or were] committed for the murder [or manslaughter] of [name of deceased] deceased, and that he [or they] has [or have] been removed to the gaol of Newgate [or the Richmond Bridewell] under the provisions of the Jurisdiction in Homicides Act, 1862.

[Signature of proper officer of the court.]

DECLARATION OF TITLE ACT.

(25 & 26 VICT. CAP. 67.)

An Act for obtaining a Declaration of Title.—
[29th July, 1862.]

Penalty on
making
false state-
ment and
suppression
of deeds and
evidence.

Sect. 44. If in the course of any proceeding before the court under this act any person acting either as principal or agent shall, knowingly and with intent to deceive, make or assist or join in or be privy to the making of any material false statement or representation, or suppress, conceal, or assist or join in or be privy to the suppressing, withholding, or concealing from the court any material document, fact, or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned for a term not exceeding three years, and either with or without hard labour, or to be fined such sum as the court by which he is convicted shall award; the order or declaration of title obtained by means of such fraud or falsehood shall be null and void for or against all persons other than a purchaser for valuable consideration without notice.

Penalty on
fraudulent
alterations,
&c

45. If in the course of any proceeding before the court under this act any person shall fraudulently forge or alter or assist in forging or altering any certificate or other document relating to such land or to the title thereof, or shall fraudulently offer, utter, dispose of, or put off any such certificate or other document, knowing the same to be forged or altered, such person shall be guilty of felony, and upon conviction shall be liable, at the discretion of the court by which he is convicted, to be kept in penal servitude for life or for any term not less than three years, or to be imprisoned for a term not exceeding two years,

with or without hard labour, and with or without solitary confinement.

46. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the person who has committed such act.

Conviction not to affect civil remedy

47. Nothing in this act contained shall entitle any person to refuse to make a complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding, in any court of law or equity, or in the court of bankruptcy; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any criminal proceeding.

Enactment of penalty not to exclude obligation to make discovery.

48. In the construction of this act (except where the context or other provisions of the act require a different construction) the word "person" shall include a body politic or corporate; the word "possession" shall include receipt of the rents and profits; and the word "land" shall not include any incorporeal hereditaments, but shall include all corporeal tenements and hereditaments not expressly excepted.

Construction of terms, &c. in this act:

"Person;"
"Possession;"
"Land."

49. This act shall relate to England only, and shall come into operation on the first day of January one thousand eight hundred and sixty-three, and may be cited as "The Declaration of Title Act, 1862."

Extent of act.

Short title

MERCHANDISE MARKS ACT.

(25 & 26 VICT. CAP. 88.)

An Act to amend the Law relating to the Fraudulent Marking of Merchandise.—[7th August, 1862.]

WHEREAS it is expedient to amend the laws relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construc-
tion of
words.

Sect. 1. In the construction of this act the word "person" shall include any person, whether a subject of Her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country or of any of Her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons subjects of Her Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within Her Majesty's dominions or elsewhere, or partly within Her Majesty's dominions and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device; emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem;

figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign which in pursuance of any statute or statutes for the time being in force relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them; the word "misdemeanor" shall include crime and offence in Scotland; and the word "court" shall include any sheriff or sheriff substitute in Scotland.

2. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any trade mark, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or mer-

Forging a trade mark or falsely applying any trade mark with intent to defraud, a misdemeanor.

chandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to Her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark as aforesaid, shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeited trade mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold or intended to be sold, a misdemeanor.

3. Every person who, with intent to defraud, or to enable another to defraud, any person, shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article, shall be intended to be sold or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any chattel or article or cause or procure any chattel or article to be enclosed or placed, in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach or cause

or procure to be applied or attached to any chattel or article any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach any chattel or article, or cause or procure any chattel or article to be enclosed, placed, or attached in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to Her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied, and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

4. Every person who, after the thirty-first day of December one thousand eight hundred and sixty-three, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel

Selling articles with forged or false trade marks after 31st December, 1863, penalty equal to

value of
article sold,
and a sum
not exceed-
ing 5*l.* nor
less than
10*s.*

or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding five pounds and not less than ten shillings.

Additions to
and altera-
tions of
trade marks
made with
intent to
defraud to
be deemed
forgeries.

5. Every addition to and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used with intent to defraud, or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark or any such imitation of a trade mark, as aforesaid done by any person with intent to defraud, or to

enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this act.

6. Where any person who, at any time after the thirty-first day of December one thousand eight hundred and sixty-three, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel, or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark or such forged or counterfeited trade mark as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound upon demand in writing delivered to him or left for him at his last known dwelling-house or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same; and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with to order such information to be given within a certain time to be

Any person who after 31st December 1863, shall have sold an article having a false trade mark to be bound to give information where he procured it.

Power to justices to summon parties refusing to give information.

Penalty for
refusal 5l.

appointed by him ; and any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to Her Majesty the sum of five pounds, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such chattel or article was sold, uttered, or exposed for sale or other purpose as aforesaid, at the time of such selling, uttering, or exposing was a forged, counterfeited, and false trade mark, or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

Marking
any false
indication of
quantity, &c.
upon any
article with
intent to de-
fraud, pen-
alty a sum
equal to the
value of the
article and
the further
sum not ex-
ceeding 5l
and not less
than 10s.

7. Every person who, with intent to defraud or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof to be the subject of any

existing patent, privilege, or copyright, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding five pounds and not less than ten shillings.

8. Every person who, after the thirty-first day of December One thousand eight hundred and sixty-three, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to Her Majesty a sum not exceeding five pounds and not less than five shillings.

Selling or exposing for sale after the 31st December 1863 articles with false statement of quantities, &c., penalty not more than 5*l.*, or less than 5*s.*

9. Provided always, that the provisions of this act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such chattel or article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such chattel or article to be of some particular class or descrip-

Proviso that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures.

tion of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression, as aforesaid shall have been applied.

Description
of trade
marks and
forged trade
marks in
indictments,
&c.

10. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark, or setting forth any copy or fac-simile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark, without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or fac-simile thereof.

Conviction
not to affect
any right or
civil remedy

11. The provisions in this act contained of or concerning any act, or any proceeding, judgment, or conviction for any act hereby declared to be a misdemeanor or offence, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such act may be entitled to at law, in equity, or otherwise, and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories, or otherwise, in any suit or other civil proceeding: provided always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanor at common law or

otherwise, or of any proceeding under the provisions of this act.

12. In every indictment, information, conviction, pleading, and proceeding against any person for any misdemeanor or other offence against the provisions of this act in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanor or other offence did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanor, and on the hearing of any information or charge of or for any such other offence as aforesaid, and on the trial of any action against any person to recover a penalty for any such other offence as aforesaid, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanor and offence that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Intent to defraud, &c., any particular person need not be alleged in an indictment, &c., or proved.

13. Every person who shall aid, abet, counsel, or procure the commission of any offence which is by this act made a misdemeanor shall also be guilty of a misdemeanor.

Persons who aid in the commission of a misdemeanor to be also guilty.

14. Every person who shall be convicted or found guilty of any offence which is by this act made a misdemeanor shall be liable, at the discretion of the court and as the court shall award, to suffer such punishment by imprisonment for

Punishment for misdemeanor under this act.

not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

Recovery of
penalties.

15. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to Her Majesty any of the penalties or sums of money mentioned in the provisions of this act, every such penalty or sum of money shall or may be recovered in England, Wales, or Ireland in an action of debt, which any person may as plaintiff for and on behalf of Her Majesty commence and prosecute to judgment in any court of record, and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any) sworn to try any issue in such action, and if there shall be no such jury then by the court or some other jury, as the court shall think fit, or instead of any such action being commenced such penalty or sum of money shall or may in England or Wales be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed; and shall or may in Ireland be recovered in like manner by civil bill in the civil bill court of the county or place in which the offence was committed, or in which the offender shall reside or have any place of business; and shall or may in Scotland be recovered by action before the court of session in ordinary form or by summary action before the sheriff of the county where the offence shall have been committed or the offender may reside or have any place of business, which sheriff, upon

proof of the offence, either by the confession of the person offending or by the oath and affirmation of one or more credible witnesses, shall convict the offender, and find him liable in the penalty or penalties aforesaid as also in expenses ; and it shall be lawful for the sheriff in pronouncing such judgment for the penalty or penalties and costs to insert in such judgment a warrant in the event of such penalty or penalties and costs not being paid to levy and recover the amount of the same by pouding : provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assailing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the sheriff in such summary action shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise.

16. In every case in which any such penalty or sum of money forfeited to Her Majesty as herein-before mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of Her present Majesty, intituled, "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders ;" and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said act.

Summary proceedings before justices to be within 11 & 12 Vict. c. 43.

17. In every case in which judgment shall be obtained in any such action as aforesaid for the amount of any such penalty or sum of money

In actions penalties to be accounted for in like

manner as other moneys payable to the Crown, and plaintiffs to recover full costs of suit.

forfeited to Her Majesty, the amount thereof shall be paid by the defendant to the sheriff or the officer of the court, who shall account for the same in like manner as other moneys payable to Her Majesty, and, if it not be paid, may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding, as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty, upon obtaining judgment, shall be entitled to recover and have execution for all his costs of suit, which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in, about, or for the purposes of the action, unless the court, or a judge thereof, shall direct that costs of the ordinary amount only shall be allowed.

Limitations of actions. &c.

18. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

After 31st December, 1863, vendor of an article with a trade mark to be deemed to contract that the mark is genuine.

19. In every case in which at any time after the thirty-first day of December one thousand eight hundred and sixty-three any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask,

bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

20. In every case in which at any time after the thirty-first day of December one thousand eight hundred and sixty-three any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

After 31st December, 1863, vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

21. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark, to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for preventing the repetition or continuance of

In suits at law or in equity against persons for using forged trade marks, court may order article to be destroyed, and may award injunction, &c.

any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment or decree against the defendant, the court shall have power to direct every such chattel and article to be destroyed or otherwise disposed of; and in every such suit in a court of law the court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment, and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of court; and in every such suit at law or in equity it shall be lawful for the court or a judge thereof to make such order as such court or judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeited trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any chattel, article, and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of court.

Persons
aggrieved
by forgeries

22. In every case in which any person shall do or cause to be done any of the wrongful acts

following; (that is to say,) shall forge or counterfeit any trade mark; or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture; or shall inclose or place any chattel or article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or shall apply or attach to any chattel or article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or shall inclose, place, or attach any chattel or article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person; every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the committal of any similar act.

may recover damages against the guilty parties.

23. In every action which any person shall under the provisions of this act commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit, which shall

Defendant obtaining a verdict to have full indemnity for costs.

include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the court, or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

A plaintiff suing for a penalty may be compelled to give security for costs.

24. In any action which any person shall, under the provisions of this act, commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if it shall be shown to the satisfaction of the court or a judge thereof that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum of money is alleged to have become payable, and also that the person so suing as plaintiff is not resident within the jurisdiction of the court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the court or judge shall or may order that the plaintiff shall give security by the bond or recognisance of himself and a surety, or by the deposit of a sum of money, or otherwise, as the court or judge shall think fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

Act not to affect the Corporation of Cutlers of Hallamshire nor to repeal 59 Geo. 3, c. 7.

25. Nothing in this act contained shall be construed to affect the rights and privileges of the corporation of cutlers of the liberty of Hallamshire in the county of York, nor shall anything in this act contained be construed in any way to repeal or make void any of the provisions contained in the fifty-ninth George Third, chapter seven, intituled "An Act to regulate the Cutlery Trade in England."

26. The expression "The Merchandise Marks Short title. Act, 1862," shall be a sufficient description of this act.

THE COMPANIES ACT.

(25 & 26 VICT. CAP. 89.)

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.—[7th August, 1862.]

Sect. 166. If any director, officer, or contributory of any company wound-up under this act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Penalty on falsification of books.

167. Where any order is made for winding-up a company by the court or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be,) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors in the case of winding-up by court.

Prosecution
of delin-
quent direc-
tors, &c., in
case of
voluntary
winding-up.

168. Where a company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty of
perjury.

169. If any person, upon any examination upon oath or affirmation authorised under this act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this act, or otherwise in or about any matter arising under this act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

UNION ASSESSMENT COMMITTEE ACT.

(25 & 26 VICT. CAP. 103.)

An Act to amend the Law relating to Parochial Assessments in England.—[7th August, 1862.]

Penalty for
non-attend-
ance, &c., in
obedience to
order of the
committee.

Sect. 40. Every person who wilfully refuses to attend in obedience to any lawful order of any such committee, or to give evidence, or refuses to produce any rate book, assessment, or valuation which may be lawfully required to be produced before such committee, shall for every such offence be liable to a penalty not exceeding twenty pounds upon a summary conviction for

the same before two justices of the peace; and every person who wilfully injures, defaces, conceals, or destroys such rate book, or who upon any examination before any such committee wilfully gives false evidence, shall be deemed guilty of a misdemeanor.

Injuring, &c.
rate books
a misde-
meanor.

THE JURIES ACT.

(25 & 26 VICT. CAP. 107.)

An Act to give greater Facilities for summoning Persons to serve on Juries, and for other Purposes relating thereto.—[7th August, 1862.]

WHEREAS it is expedient to amend an act passed in the session in Parliament holden in the sixth year of the reign of his late Majesty King George the Fourth, intituled “An Act for Consolidating and amending the Laws relative to Jurors and Juries,” and also to give greater facilities for summoning persons to serve on any jury: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

6 Geo. 4. c. 50.

Sect. 1. This act may be cited as “The Juries Act, 1862,” and shall be construed with and as part of the said recited act, hereinafter termed the Principal Act.

Short title of
act, &c.

2. All registered pharmaceutical chemists and managing clerks to attorneys, solicitors, and proctors actually practising, all subordinate officers in gaols and houses of correction shall be and are hereby absolutely freed and exempted from being returned and from serving upon any

Exemptions
from serving
on juries.

juries or inquests whatsoever, and shall not be inserted in the lists to be prepared by virtue of the Principal Act or of this act.

Provisions
as to high
constables
repealed.

3. All the provisions of the Principal Act relating to the functions of high constables shall be and are hereby repealed, except as to any liabilities incurred before such repeal, and the duties of high constables as set forth in the Principal Act shall cease and determine.

Clerk of the
peace to
issue pre-
cepts to pa-
rish officers
by post.

4. The clerk of the peace in every county, riding, and division in England and Wales shall on or before the twentieth day of July in every year issue his precept (in the form set forth in the schedule to this act, or as near thereto as may be), to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships, within the county, riding, or division for which he acts, requiring them to make out before the first day of September then next ensuing a true list of all men residing within their respective parishes and townships qualified and liable to serve on juries according to the Principal Act, and also to perform and comply with all other the requisitions in the said precepts contained, and shall forward the same, together with a competent number of printed forms of returns, for the use of the respective persons by whom such returns are to be made, by post, in a registered letter having the words "Jury Precept" legibly written or printed on the outside thereof, and addressed to the churchwardens and overseers as aforesaid; and every precept delivered or tendered as a registered letter at the address of the person to whom it is addressed, whether a receipt be given for the same or not, shall be deemed to have been served on the person to whom the same was so delivered or tendered, and if delivered or tendered to any one churchwarden or overseer of a parish or

township shall be deemed to have been served on the whole of the churchwardens and overseers of such parish or township.

5. The provisions of the Principal Act as to the expense of printing the warrants, precepts, and returns therein mentioned shall apply to the printing of the precepts and returns required by this act; and the precepts and jury lists required to be posted and registered by this act shall be posted and registered at the expense of the county, riding, or division.

Precepts, &c.
to be printed
at the ex-
pense of the
county, &c.

6. After the receipt of such precept from the clerk of the peace, the duties of the churchwardens and overseers with reference to the jury lists, and the penalties to which they are liable for making default therein, shall be in all respects the same as if the words "clerk of the peace" had been substituted for the words "high constable" in the eighth section of the Principal Act.

Duties and
liabilities of
parish offi-
cers to con-
tinue.

7. No notice shall be sent to the high constable of the holding of a special petty sessions for the production of the jury lists, as required by the tenth section of the Principal Act.

As to notices
of special
petty ses-
sions.

8. It shall be lawful for the justices of the peace then present to adjourn any special petty sessions held under the provisions of the tenth section of the Principal Act to any day within seven days thereafter, for the production of the jury list for any parish or township which, through the default of any churchwarden or overseer, has been omitted to be produced at such special petty sessions, and notice shall be sent by the clerk to such justices to such churchwardens or overseers requiring them to produce the said list at such adjournment.

Justices to
adjourn
petty ses-
sions for the
production
of list.

9. It shall be the duty of the clerk to the Justices' clerk to send

jury lists to clerk of the peace.

justices of the peace in every petty sessional division in England and Wales to take charge of the jury lists of each parish and township within such division, when and as soon as they shall have been allowed and signed by the said justices, as by the Principal Act provided, and to forward the same by the next available post in a registered letter or letters, with the words "jury list" legibly written or printed on the outside thereof, addressed to the clerk of the peace for the county, riding, or division, at his office, together with a schedule of the parishes and townships for which jury lists have been then allowed, which schedule shall be signed by one of the said justices, and the clerk to the justices shall be entitled to the fee of two shillings and sixpence, to be paid out of the county rate, for the discharge of the duties hereby imposed upon him.

Clerk of the peace to deal with the jury lists as before.

10. The duties of the clerk of the peace with reference to the jury lists so forwarded to him by the clerks to the justices, and the penalties to which he is liable for making default therein, shall be in all respects the same as if this act had not passed, and the said lists had been returned by the high constables to the court of quarter sessions under the provisions of the Principal Act.

All jurors may be summoned by post.

11. Any person liable to serve on any jury may be summoned as heretofore, or in the manner following; that is to say, the sheriff or other proper officer may make out a summons and affix the seal of his office thereto, and such summons having the words "jury summons" legibly written or printed on the same side as the address, may be sent open by the post, prepaid, and directed to the person so required to serve as junior at his place of abode as described in "the jurors book," which said summons, together with a duplicate endorsed with the name and

address of the juror to whom the original summons is directed, shall be taken to the postmaster of any post office where money orders are received or paid, within such hours as shall have been previously agreed upon at such post office, and under such regulations with respect to the registration of such summons and the fee to be paid for such registration (which fee shall in no case exceed twopence over and above the ordinary rate of postage) as shall from time to time be made by the Postmaster-General in that behalf; and in all cases in which such fee shall have been duly paid the postmaster shall compare the address of the said summons with that of the duplicate, and on being satisfied that they are alike shall forward the summons to its address by the post, and shall return the duplicate to the party bringing the same, duly stamped with the stamp of the said post office; and the production by the party who posted such summons of such stamped duplicate shall be evidence of the summons having been delivered at the dwelling-house of the person whose name and address is thereon endorsed, at the place mentioned in such indorsement, on the day on which such summons would, in the ordinary course of post, have been delivered, provided it shall appear that the same was not returned by the post office as undelivered; and any summons sent by the post as before mentioned, and not so returned as undelivered, shall be considered in all respects as duly served; and in the event of any persons to whom any summons shall be addressed being ascertained to be dead, or to have permanently left the place to which such summons is addressed, the postmaster or letter carrier of the place in which the summons shall then be shall endorse thereon the reason of the non-delivery thereof, and forward the same in the usual course of post to the Returned Letter Office in London, in order that it may be returned

to the sender: Provided always, that when any summons shall be served by post under the provisions of this act, two additional days shall be allowed for the transmission of such summons by post, over and above the number of days required by law for the service of a summons, before the day on which the juror is required to attend.

Fines may be remitted upon cause shown.

12. Whenever any fine shall be imposed upon any person for not attending as a juror in obedience to a summons in that behalf, it shall not be lawful to estreat the said fine until after the expiration of fourteen days, and in the meantime the proper officer of the court by which such fine was imposed shall forthwith, by letter, inform the said person of the imposition of such fine, and require him, within six days after the date of such letter, to forward him an affidavit of the cause, if any, of his non-attendance; and such officer shall, upon the receipt of any such affidavit, submit the same to the said court, or the judge or chairman who presided at the said court at the time when such fine was imposed, and such court, judge, or chairman shall have power to remit such fine.

Sheriffs to be allowed costs of summonses.

13. The costs incurred by any sheriff summoning jurors by post, under the provisions of this act, so far as the same shall not exceed the sum allowed to such sheriff, or his predecessor in office, on that account, in any one year within the three years immediately preceding the passing of this act, may be included in his ordinary bill of cravings, and shall be allowed by the Commissioners of Her Majesty's Treasury.

Extent of act.

14. This act shall not extend to Scotland or Ireland; and nothing in this act contained shall alter or affect the mode of procedure heretofore pursued in the making out of jury lists or the summoning of jurors in the city of London.

Jury lists to be made, &c. in the City of London as before.

15. This act shall come into operation on the tenth day of August one thousand eight hundred and sixty-two. Commence-
ment of act.

SCHEDULE.

Precept for returning Lists of Jurors.

| | | |
|-----------|---|---|
| County of | } | To the churchwardens and overseers of the poor of the parish [<i>or</i> , to the overseers of the poor of the township] of |
| to wit | | |
| Hundred | | |
| of | | |

You are hereby required to make out, before the first day of September next, a true list in writing in the form hereunto annexed, containing the names of all men, being natural-born subjects of the Queen, between the ages of twenty-one and sixty, residing within your parish [*or* township] qualified to serve upon juries; that is to say, of every such man who has in his own name, or in trust for him, a clear income of ten pounds by the year in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, situate in the said county, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents taken together, in fee simple or fee tail, or for his own life, or for the life of any other person, and also of every such man who has a clear income of twenty pounds by the year in lands or tenements situate in the said county, held by lease for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives, and also of every such man who is a householder in your parish [*or* township], and is rated or assessed to the poor rate or to the inhabited house duty on a value of not less than twenty pounds [if in Middlesex thirty pounds], and you are required to make out the said list in alphabetical order, and to write the christian and surname of every man at full length, and the place of his abode, his title, quality, calling, or business, and the nature of his qualification, in the proper columns of the forms hereunto annexed, according to the specimens given in such columns for your guidance.

And if you have not a sufficient number of forms you must apply to me for more; and in order to assist you in making out the list you are to refer to the poor rate, and you may, if you think proper, apply to any collector or assessor of taxes, or any other officer who has the custody of any house tax, land tax, or other tax assessment for your parish [*or* township], and take from thence the names of men so qualified: And in making such list you are to omit the names of all peers, all judges, all clergymen, all Roman Catholic priests who shall have duly taken and subscribed the

oaths and declaration required by law ; all ministers of any congregation of Protestant dissenters whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster, and produce to you a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ; all serjeants and barristers at law, all members of the Society of Doctors of Law, and all advocates of the Civil Law, if actually practising, and all attorneys, solicitors, and proctors, if actually practising, and having taken out their annual certificates, and their managing clerks ; all officers of the Courts of Law and Equity, and of the Admiralty and Ecclesiastical Courts, if actually exercising the duties of their respective offices ; all coroners, all gaolers and keepers of houses of correction, and all subordinate officers of the same ; all members and licentiates of the Royal College of Physicians in London, all members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, and apothecaries certificated by the Court of Examiners of the Apothecaries Company, and all registered pharmaceutical chemists, if actually practising as physicians, surgeons, or apothecaries, or pharmaceutical chemists ; respectively ; all officers of the Army and Navy on full pay ; the master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond, and their clerks, officers, and servants ; all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the Buoy and Light Service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of pilots ; all the household servants of Her Majesty ; all Commissioners of Property and Income Tax ; all officers of the Post Office ; all officers of Customs and Excise ; all sheriffs' officers, high constables, and parish clerks ; all officers of the Rural and Metropolitan Police, and also all persons exempt by virtue of any Act of Parliament, prescription, charter, grant, or writ.

And when you have made out such list you are authorised to order a sufficient number of copies thereof to be printed, the expense of which printing will be allowed you by the parish [*or township*], and you are required, on the three first Sundays in September next, to fix a copy of such list, signed by you, on the principal door of every church, chapel, or other public place of religious worship within your parish [*or township*], and also to subjoin to every such copy a notice to the following effect, inserting the time and place, of which you shall be previously informed : "Take notice, that all objections to the foregoing list will be heard by the justices in petty sessions on the day of September next, at the hour of , at ;" and you must allow any inhabitant of your parish [*or township*] to inspect the original list, or a true copy of it, during the three first weeks of September next, gratis ; and you are also further required to produce the said list at such petty

sessions, and there to answer on oath such questions as shall be put to you by Her Majesty's justices of the peace there present touching the said list; and these several matters you are nowise to omit, upon the peril that may ensue.

Given under my hand at in the said county the
day of in the year

Clerk of the Peace.

The Form of Precept in Wales is to be altered according to the difference of Qualification.

POACHING PREVENTION ACT.

(25 & 26 VICT. CAP. 114.)

An Act for the Prevention of Poaching.—
[7th August, 1862.]

WHEREAS it is expedient that the laws now in force for the better detection and prevention of poaching should be amended: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The word "game" in this act shall for all the purposes of this act be deemed to include any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game; and the words "justice" and "justices" in this act shall, unless otherwise provided for, mean respectively a justice and justices of the peace respectively of or for the county, riding, division, liberty, city, borough, or place in which any game, gun, part of gun, net, snare, or engine after mentioned shall be found.

Interpreta-
tion of
terms.

Power to
constables
to search
persons,
without war-
rant, in cer-
tain cases.

2. It shall be lawful for any constable or peace officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article, or thing; and such constable or peace officer shall in such case apply to some justice of the peace for a summons citing such person to appear before two justices of the peace assembled in petty sessions, as provided in the eighteenth and nineteenth of Her present Majesty, chapter one hundred and twenty-six, section nine, as far as regards England and Ireland, and before a sheriff or any two justices of the peace in Scotland; and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding five pounds, and shall forfeit such game, guns, parts of guns, nets, and engines, and the justices shall direct the same to be sold or destroyed, and the proceeds of such sale, with the amount of the penalty, to be paid to the treasurer of the county or borough where the conviction takes place; and

no person who, by direction of a justice in writing, shall sell any game so seized shall be liable to any penalty for such sale; and if no conviction takes place, the game or any such article or thing as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized.

3. Any penalty under this act shall be recovered and enforced in England in the same manner as penalties under the act first and second William the Fourth, chapter thirty-two, and in Scotland under the act second and third William the Fourth, chapter sixty-eight, and in Ireland under the Petty Sessions, Ireland, Act, 1851, when not otherwise directed in this Act.

Recovery of penalties.

4. The powers and provisions of the Act of the eleventh and twelfth years of Her present Majesty, chapter forty-three, shall extend and apply to this Act, and to all proceedings, matters, and things to be taken, had, and done, and to all persons to be proceeded against or taking proceedings under this act.

Provisions of 11 & 12 Vict. c. 43, extended to this act.

5. No conviction or order made under this act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's Superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No conviction shall be quashed for want of form or removed by *certiorari*.

6. Any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county, riding, division, or borough wherein the cause of complaint shall have arisen, provided

Power of appeal.

that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction,* and seven clear days at the least before such sessions, and shall, within three days, enter into a recognizance, or bond of caution in Scotland, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court; and the court at such sessions shall hear and determine the matter of appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem fit, and shall, if necessary, issue process for enforcing such judgment.

MISAPPROPRIATION BY SERVANTS ACT.

(26 & 27 VICT. CAP. 103.)

An Act to amend the Law in certain Cases of Misappropriation by Servants of the Property of their Masters.—[28th July, 1863.]

WHEREAS the offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of giving the same or of having the same given to the horses or other animals of such master, is by law a felony: And whereas it is desirable to alter the law in this respect: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. If any servant shall, contrary to the orders of his master, take from his possession any corn, pulse, roots, or other food, for the purpose of giving the same or of having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of or be proceeded against for felony, but shall, on conviction of such offence before two justices of the peace, at their discretion, either be imprisoned, with or without hard labour, for any term not exceeding three months, or else shall forfeit and pay such penalty as shall appear to them to be meet, not exceeding the sum of five pounds, and if such penalty shall not be paid, either immediately after the conviction or within such period as the said justices shall at the time of the conviction appoint, the servant so offending shall be imprisoned with or without hard labour, for any term not exceeding three months, unless such penalty be sooner paid: Provided always, that if upon the hearing of the charge the said justices shall be of opinion that the same is too trifling, or that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the charge, without proceeding to a conviction: Provided also, that if upon the trial of any servant for feloniously taking from his master any corn, pulse, roots, or other food consumable by horses or other animals, such servant shall allege that he took the same under such circumstances as would constitute an offence punishable under this act, and thereof shall satisfy the jury charged with his trial, then it shall be lawful for such jury to return a verdict accordingly; and thereupon the court before which such trial shall take place shall proceed to award such punishment against such servant as may be awarded by two justices of the peace on the conviction of any person under the

Servants taking their master's corn, &c., without authority, for the purpose of giving the same to their master's horses, &c., not guilty of felony, but shall be liable to imprisonment, &c.

Power to justice to dismiss case if deemed too trifling.

provisions of this act : Provided also, that in case of nonpayment of any penalty to be imposed by the court on such servant, he shall be imprisoned, with or without hard labour, for any term not exceeding three months, as the court shall order, unless such penalty be sooner paid.

Power to
appeal
against con-
viction.

2. Provided always, that if any person shall think himself aggrieved by any conviction under this act, such person may appeal to the next Court of General Quarter Sessions of the Peace which shall be holden not less than twelve days after the day of such conviction, for the county, riding, division, city, borough, or place wherein the cause of complaint shall have arisen ; Provided also, that such person shall give to the informant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the said sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded, or if such appeal shall be against any conviction whereby only a penalty, with or without costs, is adjudged to be paid, shall deposit with the clerk of the convicting justices such a sum of money as such justices shall deem to be sufficient to cover the penalty and costs, if any, so adjudged to be paid, and the costs of the appeal ; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justices before whom such recognizance shall be entered into or such deposit shall be made shall liberate such person, if in custody ; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order

therein, with or without costs to either party, as to the court shall seem meet, and in case of the affirmance of the conviction shall order and adjudge the appellant to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed the court may order the penalty and costs, if any, thereby adjudged to be paid, together with the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer of the court shall forthwith indorse on the conviction a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction: Provided that the right of appeal against any conviction under this act shall not apply so as to enable any person to appeal against any verdict of a jury as aforesaid.

3. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's Superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. No certiorari, &c.

Summary
proceedings
may be un-
der 11 & 12
Vict. c. 43.

4. Every offence under this act may be prosecuted and every conviction under this act may be enforced in the manner directed by the Act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three; and all provisions contained in the said act shall, unless repugnant to any of the provisions of this act, be applicable to such prosecution and conviction, in the same manner as if they were incorporated in this act: Provided that nothing in this act contained shall in any manner alter or affect any enactments relating to procedure in the case of any offence punishable on summary conviction within the City of London or the Metropolitan Police District, or the recovery or application of any penalty for any such offence.

Except in
London and
the Metropo-
litan police
district.

Extent of
act.

5. This act shall extend to England only.

Commence-
ment of act.

6. This Act shall commence and take effect from the first day of September, one thousand eight hundred and sixty-three.

PENAL SERVITUDE ACTS AMENDMENT ACT.

(27 & 28 VICT. CAP. 47.)

An Act to amend the Penal Servitude Acts.—

[25th July, 1864.]

16 & 17 Vict.
c. 99
20 & 21 Vict.
c. 3.

WHEREAS two acts were passed, the one chapter ninety-nine in the session of the sixteenth and seventeenth years of the reign of Her present Majesty, and the other chapter three in the session of the twentieth and twenty-first years of the same reign, having for their object the substitution of other punishments in lieu of transportation: And whereas it is expedient to amend the said acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This act shall be construed as one with the Short titles. above-mentioned acts, and the said acts, together with this act, may be cited for all purposes as the Penal Servitude Acts, 1853, 1857, and 1864, and each of the said acts may be cited as the Penal Servitude Act of the year in which it was passed.

Sentences of Penal Servitude.

2. No person shall be sentenced to penal servitude in respect to any offence committed after the passing of this act for a period of less than five years, and where under any act now in force a period of less than five years is the utmost sentence of penal servitude that can be awarded, a period of five years shall, in respect to any offence committed after the passing of this act, in such act be substituted for the less period ; and where under any act now in force a period of either less or more than five years may be awarded as a sentence of penal servitude, the least sentence of penal servitude that can be awarded under that act shall, in respect to any offence committed after the passing of this act, be a period of five years ; and where any person shall on indictment be convicted of any crime or offence punishable with penal servitude, after having been previously convicted of felony, or, in Scotland, of any crime, (whether such previous conviction shall have taken place upon an indictment or under the provisions of the act passed in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty-six,) the least sentence of penal servitude that can be awarded in such case shall be a period of seven years.

Length of sentences penal servitude.

Convict Prisons.

Punishment
of offences
in convict
prisons.

3. One of Her Majesty's Principal Secretaries of State in Great Britain, and the Lord Lieutenant or other chief governor in Ireland, may, by warrant under his hand and seal, empower any two or more justices of the peace, to be named in such warrant, acting for any county in which a prison for the reception of convicts under sentence of penal servitude is situate, to order, from time to time, the infliction of corporal punishment on any convict confined in such prison, for an offence committed by such convict in such prison, and against the discipline thereof; and any two or more justices of the peace thus empowered shall have the same power of adjudicating on such offences, and of ordering the infliction of such punishment, to be exercised under the same conditions as one of the directors of convict prisons would have, and no greater.

Licences.

Forfeiture of
licence.

4. A licence granted under the said Penal Servitude Acts, or any of them, may be in the form set forth in schedule (A.) to this act annexed, and may be written, printed, or lithographed. If any holder of a licence granted in the form set forth in the said schedule (A.) is convicted, either by the verdict of a jury, or upon his own confession, of any offence for which he is indicted, his licence shall be forthwith forfeited by virtue of such conviction; or if any holder of a licence granted under the said Penal Servitude Acts, or any of them, who shall be at large in the United Kingdom, shall, unless prevented by illness or other unavoidable cause, fail to report himself personally, if in Great Britain to the chief police station of the borough or police division, and if in Ireland to the constabulary station of the locality to which he may go within three days after his arrival therein, and being

a male subsequently once in each month, at such time and place, in such manner, and to such person as the chief officer of the constabulary force to which such station belongs shall appoint, or shall change his residence from one police district to another without having previously notified the same to the police or constabulary station to which he last reported himself, he shall be deemed guilty of a misdemeanor, and may be summarily convicted thereof, and his licence shall be forthwith forfeited by virtue of such conviction, but he shall not be liable to any other punishment by virtue of such conviction.

5. If any holder of a licence granted in the form set forth in the said schedule (A.),—

Offences by holders of a licence.

1. Fails to produce his licence when required to do so by any judge, justice of the peace, sheriff, sheriff substitute, police or other magistrate before whom he may be brought charged with any offence, or by any constable or officer of the police in whose custody he may be, and also fails to make any reasonable excuse why he does not produce the same; or
2. Breaks any of the other conditions of his licence by an act that is not of itself punishable either upon indictment or upon summary conviction;

He shall be deemed guilty of an offence punishable summarily by imprisonment for any period not exceeding three months, with or without hard labour.

6. Any constable or police officer may, without warrant, take into custody any holder of such a licence whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his licence, and may detain him in custody until he can be taken before a justice

Apprehension of holder of licence without warrant.

of the peace or other competent magistrate, and dealt with according to law.

Summary
punishment
of offences.

7. In England and Ireland any offence under this act punishable summarily may be prosecuted summarily before two or more justices; as to England, in manner directed by an act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any act amending the same; and as to Ireland, in manner directed by the act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any act amending the same.

In Scotland any offence under this act punishable summarily may be prosecuted upon summary conviction at the instance of the Procurator Fiscal before any sheriff or sheriff substitute, or before any two justices of the county, or before the magistrates or any police magistrate of the burgh in which the offence is committed.

Where
holder of
licence is
summarily
convicted,
convicting
magistrate
to forward
certificate to
Secretary of
State or
Lord Lieu-
tenant of
Ireland.

8. Where any holder of a licence granted in the form set forth in the said schedule (A.) is convicted of an offence punishable summarily under this or any other act, the justices, sheriff, sheriff substitute, or other magistrate convicting the prisoner shall without delay forward by post a certificate in the form given in schedule (B.) to this act annexed, if in England or Scotland to one of Her Majesty's principal Secretaries of State, if in Ireland to the Lord Lieutenant or other chief governor of Ireland, and thereupon

the licence of the said holder may be revoked in manner provided by the said Penal Servitude Acts.

- 9. Where any licence granted in the form set forth in the said schedule (A.) is forfeited by a conviction of any indictable offence, or is revoked in pursuance of a summary conviction under this act or any other act of Parliament, the person whose licence is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which his licence is forfeited or revoked, further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time of his licence being granted, and shall, for the purpose of his undergoing such last mentioned punishment, be removed from the prison of any county, borough, or place in which he may be confined, to any prison in which convicts under sentence of penal servitude may lawfully be confined, by warrant under the hand and seal of any justice of the peace of the said county, borough, or place, and shall be liable to be there dealt with in all respects as if such term of penal servitude had formed part of his original sentence.

10. Provided always, that it shall be lawful for Her Majesty, or for the Lord Lieutenant or other chief governor in Ireland, whenever they shall respectively think fit, to grant from time to time to convicts under sentence of penal servitude, licences in any other form different from that set forth in schedule (A.), which they may respectively consider it expedient to adopt, and containing other and different conditions; and such last-mentioned licences shall be revocable at pleasure by the authority by which they are granted; but no holder of such last-mentioned licence shall be deemed guilty of an offence punishable upon sum-

Effect of
forfeiture
or revoca-
tion of
licence.

Licences
may be
granted in
form differ-
ing from
that in
schedule (A.)

mary conviction merely by reason of the breach of the conditions of the said last-mentioned licences or any of them.

SCHEDULES.

SCHEDULE (A.).

Order of Licence to a Convict made under the Statute.

Whitehall,
day of 18

Her Majesty is graciously pleased to grant to , who was convicted of at the for the on the , and was then and there sentenced to be kept in penal servitude for the term of and is now confined in the her royal licence to be at large from the day of his liberation under this order during the remaining portion of his said term of penal servitude, unless the said shall before the expiration of the said term be convicted of some indictable offence within the United Kingdom, in which case such licence will be immediately forfeited by law, or unless it shall please Her Majesty sooner to revoke or alter such licence.

This licence is given subject to the conditions indorsed upon the same, upon the breach of any of which it will be liable to be revoked, whether such breach is followed by a conviction or not.

And Her Majesty hereby orders that the said be set at liberty within thirty days from the date of this order.

Given under my hand and seal

Conditions.

1. The holder shall preserve his licence and produce it when called upon to do so by a magistrate or police officer.

2. He shall abstain from any violation of the law.

3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.

4. He shall not lead an idle and dissolute life, without visible means of obtaining an honest livelihood.

If his licence is forfeited or revoked in consequence of a conviction for any offence, he will be liable to undergo a term of penal servitude equal to the portion of his term of years which remained unexpired when his licence was granted, viz., the term of years.

SCHEDULE (B.).

Form of Certificate of Conviction of Holder of Licence.

I do hereby certify that A.B., the holder of a licence under
the Penal Servitude Acts, was on the day of
in the year duly convicted by of the offence
of and sentenced to

C.D.,

Clerk to the said justices.

LIMITED PENALTIES ACT.

(27 & 28 VICT. CAP. 110.)

An Act for the Amendment of the Law relating to the Mitigation of Penalties.—[29th July, 1864.]

WHEREAS by various public acts of Parliament penalties are imposed in respect of certain offences, and it is provided that such penalties are not to be reduced below the limits in such acts specified: And whereas the provisions of the said public acts are contravened by special enactments introduced into certain local acts, empowering the justices or court having cognisance of offences in certain localities to mitigate all penalties in respect of such offences: And whereas it is expedient to prevent such contravention as aforesaid of the general law: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where any public act of Parliament provides that in respect of any offence therein mentioned a penalty is to be imposed of not less than a particular sum of money, or of not less than a certain term of imprisonment or other punishment therein specified, it shall not be lawful for the justices or court having cognisance of such offence to mitigate

Justices prohibited from mitigating penalties under general powers of local act

such penalty below the limit specified in that act of Parliament, in pursuance of any power of mitigating penalties conferred on such justices or court by any local or private act of Parliament.

Short title. 2. This act may be cited for all purposes as "The Limited Penalties Act, 1864."

FELONY AND MISDEMEANOR (EVIDENCE AND PRACTICE AMENDMENT) ACT.

(28 VICT. CAP. 18.)

An Act for amending the Law of Evidence and Practice on Criminal Trials.—[9th May, 1865.]

WHEREAS it is expedient that the law of evidence and practice on trials for felony and misdemeanor and other proceedings in courts of criminal judicature should be more nearly assimilated to that on trials at nisi prius: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; that is to say,

Provisions
of sect. 2 of
this act to
apply to
trials com-
menced on
or after
July 1, 1865.

1. That the provisions of section two of this act shall apply to every trial for felony or misdemeanor which shall be commenced on or after the first day of July one thousand eight hundred and sixty-five, and that the provisions of sections from three to eight, inclusive, of this act shall apply to all courts of judicature, as well criminal as all others, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

2. If any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence, and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanor, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present.

Summing up
of evidence
in cases of
felony and
misde-
meanor.

3. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and

How far
witness may
be dis-
credited by
the party
producing.

he must be asked whether or not he has made such statement.

As to proof of contradictory statements of adverse witness.

4. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasions, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examinations as to previous statements in writing.

5. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

Proof of previous conviction of witness may be given.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having

the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

7. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

As to proof
by attesting
witnesses.

8. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses ; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

As to com-
parison of
disputed
writing.

9. The word "counsel" in this act shall be construed to apply to attorneys in all cases where attorneys are allowed by law or by the practice of any court to appear as advocates.

"Counsel."

10. This act shall not apply to Scotland.

Not to apply
to Scotland.

SMALL PENALTIES ACT.

(28 & 29 VICT. CAP. 127.)

An Act to amend the Law relating to small Penalties.
—[6th July, 1865.]

WHEREAS it is expedient to amend the law relating to small penalties : Be it enacted by the Queen's most excellent Majesty, by and with the advice and con-

sent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This act may be cited for all purposes as "The Small Penalties Act, 1865."

Commence-
ment of act.

2. This act shall come into operation on the first day of August, one thousand eight hundred and sixty-five.

Definition of
"penalty."

3. The word "penalty" in this act shall include any sum of money recoverable in a summary manner.

Recovery of
small penal-
ties.

4. Whereupon summary conviction any offender may be adjudged to pay a penalty not exceeding five pounds, such offender, in case of nonpayment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid :

For any penalty—

The imprisonment not
to exceed

| | |
|--|----------------|
| Not exceeding ten shillings | Seven days. |
| Exceeding ten shillings and not exceeding one pound | Fourteen days. |
| Exceeding one pound but not exceeding two pounds | |
| Exceeding two pounds but not exceeding five pounds | One month. |
| | Two months. |

Saving as
to hard
labour.

5. Nothing in this act contained shall affect the power of imposing hard labour in addition to imprisonment in cases where hard labour might, on nonpayment of the penalty, have been so imposed if this act had not been passed.

Application
of act.

6. This act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any act of Parliament, whether passed before or after the commencement of this act; and all provisions of any act of Parliament

authorising, in the case of nonpayment of a penalty not exceeding five pounds, a longer term of imprisonment than is provided by this act, shall be repealed.

7. This act shall not apply to any penalty imposed by any act of Parliament relating to the Inland Revenue. Not to apply to penalties under Revenue Acts.

8. This act shall extend to England only. Extent of act.

PROSECUTION EXPENSES ACT.

(29 & 30 VICT. CAP. 52.)

An Act to extend the Law relating to the Expenses of Prosecutions, and to make Provision for Expenses on Charges of Felony and certain Misdemeanors before examining Magistrates.—
[23rd July, 1866.]

WHEREAS by the act of the seventh year of King George the Fourth, chapter sixty-four, certain provisions were made relating to the allowance of costs, expenses, and compensation to prosecutors and witnesses in cases of prosecutions for felonies and certain misdemeanors therein mentioned, and by an act of the session of the fourteenth and fifteenth year of Her Majesty, chapter fifty-five, the provisions of the said act are extended, and authority is given to one of Her Majesty's Secretaries of State to regulate the scale of payment to be allowed or ordered under the said act or any other act, as to the rates or scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the expense of any prosecutor or witnesses attending before such magistrate or magistrates: 7 Geo. 4, c. 64.

And whereas it is expedient to extend the law 14 & 15 Vict c. 55.

relating to expenses in cases of prosecutions to the payment of expenses incurred in attending before an examining magistrate or magistrates, and to compensation for trouble and loss of time therein, on any charge of felony *bonâ fide* made, and on any case of the several classes of misdemeanor enumerated in section twenty-three of the said act of King George the Fourth, or of section two of the said act of Her Majesty, *bonâ fide* preferred, although the parties may not be bound over by recognizance or subpoena to prosecute or give evidence, and although no committal for trial may take place :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Powers of
examining
magistrate
to grant
certificate of
expenses to
witnesses
extended,
and petty
session
clerks to
be entitled
to fees on
depositions.

1. It shall and may be lawful for any magistrate or magistrates, at his or their discretion, and he or they is and are hereby authorised and empowered, at the request of any prosecutor or other person who shall have appeared before such magistrate or magistrates, either by summons or otherwise, on a charge of felony, *bonâ fide* made upon reasonable and probable cause, or on a charge in any case of the several misdemeanors enumerated in section twenty-three of the said act of King George the Fourth, and of section two of the said act of Her Majesty, *bonâ fide* preferred, and who shall have been examined on such charge of felony and misdemeanor, to grant a certificate of the expenses and of the amount to be allowed for trouble and loss of time to the witnesses so appearing and examined on such charge of felony or misdemeanor, in the same manner and to the same or like extent as magistrates are authorised by law to do in cases of felony and in cases of misdemeanor enumerated in the said acts, where

a committal for trial takes place or the parties are bound over by recognizance or subpoena to prosecute and give evidence ; and it shall also be lawful for such examining magistrate or magistrates to allow to the clerk of the magistrates acting for the petty sessional division or district (except where such clerk is paid by salary in lieu of fees) the same fees on taking the depositions on such charge or charges as would be allowed to him, or he would be entitled to at law, in the event of a committal for trial taking place, and to include such allowance of fees in the certificate.

2. Every examining magistrate signing or granting such certificate shall forward the same to the clerk of the peace of the county, riding, division, city, or borough within which such petty sessional division or district is situate, to be laid by him before the next quarter sessions of the peace for such county, riding, division, city, or borough ; and such court shall be at liberty to allow the amount or so much of the amount named in the certificate, on the same being certified by the proper officer of the court of quarter sessions as correct, in accordance with the scale of payment fixed or to be from time to time fixed under section five of the act of Her Majesty before referred to, and thereupon to sign an order for payment on the treasurer or other officer of the county, riding, or division, or city, liberty, or franchise, in which the offence shall have been committed or supposed to have been committed, in the same manner as an order for payment would have been made in case the parties had been bound over to prosecute, and an indictment had been preferred, and such treasurer or other officer shall pay the amount of such order to the person or persons named therein.

Magistrates signing, &c. certificates to forward same to clerks of the peace to be laid before Court of Quarter Sessions, which may allow amount wholly or partially, and make orders for payment.

3. This act shall continue in force for three years next after the passing thereof, and thence

Duration of act.

to the end of the then next session of Parliament.

Application
of act.

4. This act shall not extend to Ireland or Scotland. *

REFORMATORY SCHOOLS ACT.

(29 & 30 VICT. CAP. 117.)

An Act to consolidate and amend the Acts relating to Reformatory Schools in Great Britain.—
[10th August, 1866.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This act may be cited as "The Reformatory Schools Act, 1866."

Application
of act.

2. This Act shall not extend to Ireland.

Definition of
terms.

3. "Managers" shall include any person or persons having the management or control of any school to which this act applies :

"Justice" shall apply to England only, and shall mean a justice of the peace having jurisdiction in the place where the matter requiring the cognizance of a justice arises :

"Justices" shall apply to England only, and shall mean two or more justices in petty sessions, and shall include the Lord Mayor or an alderman of the City of London, or a police or stipendiary magistrate or other justice having by law authority to act alone for any purpose with the powers of two justices :

“Magistrate” shall apply to Scotland only, and shall include sheriff, sheriff-substitute, justice of the peace of a county, judge in a police court, and provost or baillie of a city or burgh :

“Prison authority” shall in England mean the same persons as are defined to be prison authorities by the Prisons Act, 1865, and in Scotland shall mean the administrators of a prison, as defined by the Prisons (Scotland) Administration Act, 1860 : 28 & 29 Vict.
c. 126.
23 & 24 Vict.
c. 105.

“Visiting Justice” shall in Scotland mean the administrators of a prison, defined as aforesaid.

Certified Reformatory Schools.

4. One of Her Majesty's principal Secretaries of State, hereinafter referred to as the Secretary of State, may, upon the application of the managers of any reformatory school for the better training of youthful offenders, direct one of Her Majesty's inspectors of prisons, who shall be styled the Inspector of Reformatory Schools, to examine into the condition and regulations of the school, and to report to him thereon ; and, if satisfied with such report, the Secretary of State may, by writing under his hand, certify that such school is fitted for the reception of such youthful offenders as may be sent there in pursuance of this act, and the same shall be deemed a certified reformatory school. Mode of certifying reformatory schools.

No substantial addition or alteration shall be made to or in the buildings of any certified reformatory school without the approval in writing of the Secretary of State.

5. Every certified reformatory school shall from time to time, and at least once in every year, be visited by the Inspector of Reformatory Schools ; and the Secretary of State, if dissatisfied with the condition of such school as reported to him, may withdraw the certificate, and may by notice under his hand, addressed and sent to the managers of such Inspection of school.

school, declare that the certificate is withdrawn as from a time specified in the notice, being not less than six months after the date of the notice.

Power to
appoint
assistant to
inspector.

6. The Secretary of State may from time to time appoint a fit person to assist the Inspector of Reformatory Schools; and every person so appointed shall have such of the powers and duties of the inspector as the Secretary of State from time to time prescribes, but shall act under the direction of the inspector.

Resignation
of certificate
by mana-
gers.

7. The managers of any certified reformatory school may, upon giving six months, and the executors or administrators of a deceased manager (if only one) of any certified reformatory school may, upon giving one month's previous notice in writing of their intention so to do, resign the certificate given to such school; and accordingly at the expiration of six months or one month (as the case may be) from the date of the notice (unless before that time the notice is withdrawn), the certificate shall be deemed to be resigned.

Liabilities
of managers

8. The managers of a certified reformatory school may decline to receive any youthful offender proposed to be sent to them under this act, but when they have once received him they shall be deemed to have undertaken to educate, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the offenders detained in the school is discontinued, whichever shall first happen.

Effect of
withdrawal
of certifi-
cate.

9. Whenever the certificate is withdrawn from or resigned by the managers of a reformatory school no youthful offender shall be received into such school after the date of the receipt by the

managers of the school of the notice of withdrawal or after the date of the notice of resignation (as the case may be); but the obligation of the managers to educate, clothe, lodge, and feed any youthful offenders in the school at the respective dates aforesaid shall, excepting so far as the Secretary of State may otherwise direct, be deemed to continue until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the offenders detained in the school is discontinued, whichever shall first happen.

10. When the withdrawal or resignation of the certificate of a reformatory school takes effect, the youthful offenders detained therein shall be, by the order of the Secretary of State, either discharged or transferred to some other certified reformatory school.

Disposal of inmates on withdrawal or resignation of certificate.

11. A notice of a grant of any certificate to a reformatory school, or of the withdrawal or resignation of such a certificate, shall within one month be advertised by order of the Secretary of State, as to a school in England in the *London Gazette*, and as to a school in Scotland in the *Edinburgh Gazette*.

Publication of the grant or withdrawal of certificate.

12. The managers of any certified reformatory school may from time to time make all necessary rules for the management and discipline of the school under their charge, but such rules shall not be contrary to the provisions of this act, and shall not be enforced until they have been submitted to and approved in writing by the Secretary of State, and no alteration shall be made without the approval in writing of the Secretary of State in any rules so approved.

Power to make rules, &c.

13. Every officer of a certified reformatory school authorized by the managers of the school,

Officers to have privi-

leges, &c. of
constables.

in writing under their hands or the hand of their secretary, to take charge of any youthful offender sentenced to detention under this act for the purpose of conveying him to or from the school, or of bringing him back to the school in case of his escape or refusal to return, shall, for such purpose and while engaged in such duty, have all such powers, authorities, protection, and privileges for the purpose of the execution of his duty as a reformatory officer as any constable duly appointed has within his constablewick by common law, statute, or custom.

*Commitment of Offenders to and their Status at a
Certified Reformatory School.*

Offenders
under 16
years of age
may be sent
to certified
reformatory
schools.

14. Whenever any offender who, in the judgment of the court, justices, or magistrate before whom he is charged, is under the age of sixteen years, is convicted, on indictment or in a summary manner, of an offence punishable with penal servitude or imprisonment, and is sentenced to be imprisoned for the term of ten days or a longer term, the court, justices, or magistrate may also sentence him to be sent at the expiration of his period of imprisonment, to a certified reformatory school, and to be there detained for a period of not less than two years and not more than five years :

Provided always, that a youthful offender under the age of ten years shall not be so directed to be sent to a reformatory school unless he has been previously charged with some crime or offence punishable with penal servitude or imprisonment, or is sentenced in England by a judge of assize or court of general or quarter sessions, or in Scotland by a circuit court of justiciary or sheriff.

The particular school to which the youthful offender is to be sent may be named either at the time of his sentence being passed, or within seven

days thereafter, by the court, justices, or magistrate who sentenced him, or in default thereof at any time before the expiration of his imprisonment by any visiting justice of the prison to which he is committed.

In choosing a certified reformatory school, the court, justices, magistrate or visiting justice shall endeavour to ascertain the religious persuasion to which the youthful offender belongs, and, so far as is possible, a selection shall be made of a school conducted in accordance with the religious persuasion to which the youthful offender appears to the court, justices, magistrate, or visiting justice to belong, which persuasion shall be specified by the court, justices, magistrate, or visiting justice.

It shall be lawful, upon the representation of the parent, or in the case of an orphan then of the guardian or nearest adult relative, of any offender detained in any such school, for a minister of the religious persuasion of such offender, at certain fixed hours of the day, which shall be fixed by the Secretary of State for the purpose, to visit such school for the purpose of affording religious assistance to such offender, and also for the purpose of instructing such offender in the principles of his religion.

15. The gaoler of every prison having in his custody any youthful offender sentenced to be sent to a reformatory school shall at the appointed time deliver such offender into the custody of the superintendent or other person in charge of the school in which he is to be detained, together with the warrant or other document in pursuance of which the offender was imprisoned and is sent to such school.

Removal of
offender to
certified
reformatory
school

The possession of the warrant or other document in pursuance of which a youthful offender is sent to a certified reformatory school shall be a sufficient authority for his detention in such school,

Power to parent, &c. to apply to remove offender to a school conducted in accordance with offender's religious persuasion.

16. The parent, step-parent, or guardian, or if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative of any youthful offender sent or about to be sent to a certified reformatory school which is not conducted in accordance with the religious persuasion to which the offender belongs, may apply to the court by whom such offender was sentenced to be sent to a reformatory school, or to the visiting justices of the prison to which he was committed by that court, or to the justices or magistrate by whom he was sentenced to be sent to a reformatory school (or justices or a magistrate having the like jurisdiction), to send or to remove such offender to a certified reformatory school conducted in accordance with the offender's religious persuasion, and the court, visiting justices, justices, or magistrate (as the case may be) shall, upon proof of such offender's religious persuasion, comply with the request of the applicant, provided :

First, that the application be made before the offender has been sent to a certified reformatory school, or within thirty days after his arrival at such a school ;

Secondly, that the applicant show to the satisfaction of the court, visiting justices, justices, or magistrate that the managers of the school named by him are willing to receive the offender.

Discharge or removal by order of Secretary of State.

17. The Secretary of State may at any time order any offender to be discharged from a certified reformatory school, or to be removed from one certified reformatory school to another, but so that the whole period of detention of the offender in a reformatory school shall not be increased by such removal.

The Secretary of State may also at any time, after having given ten days' notice to the

managers, order a youthful offender under sentence of detention in a reformatory or industrial school established under any other act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, to be discharged from such school, or to be removed therefrom to any certified reformatory school, and in case of removal the youthful offender shall after such removal be deemed to be subject in all respects to the provisions of this act, but so that the whole period of detention of the offender under his sentence shall not be increased by such removal.

18. The managers of a certified reformatory school may, at any time after the expiration of eighteen months of the period of detention allotted to a youthful offender, by licence under their hands, permit him to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him. Placing offenders out on licence.

Any licence so granted shall not be in force for more than three months, but may at any time before the expiration of such three months be renewed for a further period not exceeding three months, to commence from the expiration of the previous period of three months, and so from time to time until the youthful offender's period of detention is expired.

Any such licence may also be revoked by the managers of the school, by writing under their hands, at any time before the expiration of such period of three months, and thereupon the youthful offender to whom the licence related may be required by the managers, by writing under their hands, to return to the school.

The time during which a youthful offender is absent from a certified reformatory school in pursuance of a licence under this section shall, except where such licence has been forfeited by

his misconduct, be deemed to be part of the time of his detention in the school, and at the expiration of the time fixed by his licence he shall be taken back to the school.

Any youthful offender escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the school at the expiration of the time fixed by his licence, or any renewal thereof, or when required to do so on the revocation of his licence, shall be liable to the same penalty as if he had escaped from the school itself.

Power to
apprentice
offenders.

19. The managers of a certified reformatory school may, at any time after an offender has been placed out on licence as aforesaid, if he conducted himself well during his absence from the school, bind him, with his own consent, apprentice to any trade, calling, or service, notwithstanding that his period of detention has not expired; and every such binding shall be valid and effectual to all intents.

Offences in relation to Reformatory Schools.

Refusal to
conform to
rules.

20. If any offender detained in a certified reformatory school wilfully neglects or wilfully refuses to conform to the rules thereof, he shall, upon summary conviction before a justice or magistrate having jurisdiction in the place or district where the school is situate, be imprisoned, with or without hard labour, for any term not exceeding three months; and at the expiration of the term of his imprisonment he shall, by and at the expense of the managers of the school, be brought back to the school from which he was taken, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to prison.

Escaping
from school.

21. If any offender sentenced to be detained in

a certified reformatory school escapes therefrom, he may, at any time before the expiration of his period of detention, be apprehended without warrant, and, if the managers of the school think fit, but not otherwise, may (any other act to the contrary notwithstanding) be then brought before a justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable, on summary conviction before such a justice or magistrate, to be imprisoned, with or without hard labour, for any term not exceeding three months; and at the expiration of such term he shall, by and at the expense of the managers of the school, be brought back to the school from which he escaped, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his escaping.

22. Every person who commits any of the following offences (that is to say,)—

First, knowingly assists directly or indirectly an offender detained in a certified reformatory school to escape from the school;

Penalty on persons inducing offenders to escape from certified reformatory schools.

Second, directly or indirectly induces such an offender to escape from the school;

Third, knowingly harbours, conceals, or prevents from returning to the school, or assists in harbouring, concealing, or preventing from returning to the school, any offender who has escaped from a certified reformatory school,—

shall, on summary conviction before two justices or a magistrate, be liable to a penalty not exceeding twenty pounds, or, at the discretion of the justices, to be imprisoned for any term not exceeding two months, with or without hard labour.

Expenses of Reformatory Schools.

Expenses of conveyance and clothing 23. The expense of conveying to any certified reformatory school any youthful offender who has been directed to be detained in such a school, and the expense of proper clothing for him requisite for his admission to the school, shall be defrayed as a current expense by the prison authority within whose district he has been last imprisoned.

Contribution by Treasury. 24. The commissioners of Her Majesty's treasury may contribute, out of money provided by Parliament, such sum as the Secretary of State may recommend towards the expenses of the custody and maintenance of any offender detained in a certified reformatory school, or in discharge of the expenses of any removal of an offender which has been ordered under the provisions of this act.

Order of justices for contribution to maintenance of offenders in school. 25. The parent or step-parent or other person legally liable to maintain any youthful offender detained in a certified reformatory school shall, if of sufficient ability, contribute to his support and maintenance therein a sum not exceeding five shillings per week.

On the complaint of the inspector of reformatory schools, or of any agent of the inspector, or of any constable under the directions of the inspector (with which directions the constable is hereby required to comply), at any time during the continuance of the offender in the school, any justices or magistrate having jurisdiction at the place where the parent, step-parent, or other person liable as aforesaid resides, may, on summons to the parent or step-parent or other person liable as aforesaid, examine into his or her ability, and may, if they or he think fit, make an order or decree on him or her for the payment to the inspector of reformatory schools, or to an agent of the inspector, of such weekly sum, not exceed-

ing five shillings per week, as to them or him seems reasonable, during the whole or any part of the period for which the offender is liable to be detained in the school.

Every such order or decree may specify the time during which the payment is to be made, or may be until further order.

In Scotland any such order or decree shall be held to be and to have the effect of an order or decree in each and every week for payment of the sum ordered to be paid for such week; and under the warrant for arrestment therein contained (which the magistrate is hereby authorised to grant if he sees fit) it shall be lawful to arrest weekly, for payment of such weekly sum as aforesaid, the wages of the defender due and current, and such arrestment shall attach not only to the wages due and payable to the defender at the date thereof, but also to the wages current for the week or other term or period in which such arrestment is executed, any law or statute notwithstanding.

Every such payment shall go in relief of the charges on Her Majesty's Treasury, and shall be accounted for as the Commissioners of Her Majesty's Treasury direct.

The Secretary of State may, in his discretion, remit all or any part of any payment so ordered.

26. Any justices or magistrate having jurisdiction to make such order or decree may from time to time vary the same as circumstances require, on the application either of the person on whom the order or decree is made, or of the inspector of reformatory schools, or of any agent of the inspector, on fourteen days notice being first given of such application to the inspector or agent, or to such person respectively.

Variation of order.

27. Any prison authority may contract with the managers of any certified reformatory school

Power of prison authority to

contract
with mana-
gers of
schools.

for the reception and maintenance therein of offenders whose detention in a certified reformatory school is directed by a court, or justices, or a magistrate, acting for or within the district of the contracting prison authority, in consideration of such payments as may be from time to time agreed on.

Contribu-
tion to es-
tablishment
and enlarge-
ment of
certified
reformatory
schools.

28. A prison authority in England may from time to time contribute such sums of money, and upon such conditions as it may think fit, towards the alteration, enlargement, or rebuilding of certified reformatory school,—or towards the support of the inmates of such a school,—or towards the management of such a school,—or towards the establishment or building of a school intended to be a certified reformatory school,—or towards the purchase of any land required for the use of an existing certified reformatory school, or for the site of any school intended to be a certified reformatory school ; provided,—

First, that not less than two months previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the prison authority, and also in the manner in which notices relating to business to be transacted by that authority are usually given :

Secondly, that where the council of a borough is the prison authority, the order for the contribution be made at a special meeting of the council :

Thirdly, that where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the

Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase.

In Scotland a county board may contribute to any certified reformatory school with the consent and in the manner provided by The Prisons (Scotland) Administration Act, 1860.

29. In order to obtain the approval of the Secretary of State as aforesaid where required, the managers of the school, or promoters of the intended school, shall forward to the Secretary of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building, drawn on such scale, and accompanied by such particulars and estimate of cost, as the Secretary of State thinks fit to require; and the Secretary of State may approve of the plan and particulars submitted to him, with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified by writing under his hand.

Mode of obtaining sanction of Secretary of State.

30. Expenses incurred by a prison authority in England in carrying into effect the provisions of this act, shall be deemed expenses incurred by that authority in carrying into effect the provisions of The Prisons Act, 1865, and shall be defrayed accordingly.

Expenses of prison authorities and county boards, how defrayed.

Expenses incurred by a county board in Scotland in carrying into effect the provisions of this act shall be a charge on the assessment for current expenses incurred by that board in carrying into effect the provisions of The Prisons (Scotland) Administration Act, 1860.

Houses of Refuge, &c., in Scotland.

31. Where in any city, town, or place in Scotland there has been erected under Local Act of Parliament or otherwise any house of refuge for youthful offenders, or any reformatory school or

Power for local reformatories in Scotland to receive offenders.

other similar institution, the commissioners, directors, or managers thereof may receive and maintain therein if willing so to do, all such young persons as are sent thereto under this act, and may pay such portion of the fund under their control as they think proper for the training, maintenance, and disposal of such young persons: Provided that such house of refuge, school, or institution is certified as a reformatory school under this act, and the rules thereof, and all alterations thereof from time to time, are approved by the Secretary of State.

Conditional Pardons.

Power to Secretary of State to send offenders to reformatory schools on conditional pardon.

32. Where before or after the passing of this act a youthful offender has been sentenced to transportation, penal servitude, or imprisonment, and has been pardoned by Her Majesty on condition of his placing himself under the care of some charitable institution for the reception and reformation of youthful offenders, the Secretary of State may direct him, if under the age of sixteen years, to be sent to a certified reformatory school, the managers of which consent to receive him for a period of not less than two years and not more than five years; and thereupon such offender shall be deemed to be subject to all the provisions of this act, as if he had been originally sentenced to detention in a certified reformatory school.

Evidence.

Rules respecting evidence under this act.

33. The following rules shall be enacted with respect to evidence under this act:

- (1.) The production of the *London* or *Edinburgh Gazette*, containing a notice of the grant or withdrawal of a certificate by the Secretary of State to or from a reformatory school, or of the resignation of any such certificate, shall be sufficient evidence of the fact of the publication of such notice,

and also of the fact of a certificate having been duly granted to or withdrawn from the school named in the notice, or resigned by the managers thereof.

- (2.) The grant of a certificate to a certified school may also be proved by the production of the certificate itself, or of a copy of the same, purporting to be signed by the Inspector of Reformatory Schools.
- (3.) The production of the warrant or other document in pursuance of which a youthful offender is directed to be sent to a certified reformatory school, with a statement indorsed thereon or annexed thereto, purporting to be signed by the superintendent or other person in charge of the school, to the effect that the offender therein named was duly received into and is at the date of the signing thereof detained in the school, or has been otherwise dealt with according to law, shall in all proceedings relating to such offender be evidence of the identity of and of the due conviction and imprisonment of and subsequent detention of the offender named in the warrant or other document.
- (4.) A copy of the rules of a certified reformatory school, purporting to be signed by the Inspector of Reformatory Schools, shall be evidence of such rules in all legal proceedings whatever.
- (5.) A school to which any youthful offender is directed to be sent in pursuance of this act shall, until the contrary is proved, be deemed to be a certified reformatory school within the meaning of this act.

Legal Proceedings.

34. The following Acts, that is to say—

In England, the act of the session of the

Recovery of
penalties.

eleventh and twelfth years of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to summary Convictions and Orders, and any Acts amending the same;”

In Scotland, “The Summary Procedure Act, 1864,”—

shall apply to all offences, payments, and orders in respect of which jurisdiction is given to justices or a magistrate by this act, or which are directed to be prosecuted, enforced, or made in a summary manner or upon summary conviction.

Service of
notice on
managers of
schools.

35. Any notice may be served on the managers of a certified reformatory school by delivering the same personally to any one of them, or by sending it, by post or otherwise, in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any manager, or of their secretary.

Forms.

Use of
forms in
schedule.

36. No summons, notice, or order made for the purpose of carrying into effect the provisions of this Act shall be invalidated for want of form only, and the forms in the schedule to this act annexed, or forms to the like effect, may be used in the cases to which they refer, with such variations as circumstances require, and when used shall be deemed sufficient.

Repeal of Enactments.

Enactments
herein
named re-
pealed.
Sect. 11 of
1 & 2 Vict.
c. 82.

37. There shall be repealed the enactments hereinafter mentioned, that is to say,—

Section eleven of the act of the session of the first and second years of Her present Majesty, chapter eighty-two, intituled “An Act for establishing a Prison for young Offenders;”

The act of the session of the seventeenth and ^{17 & 18 Vict.} eighteenth years of Her present Majesty, chapter ^{c. 86.} eighty-six, intituled "An Act for the better Care and Reformation of youthful Offenders in Great Britain ;"

The act of the session of the eighteenth and ^{18 & 19 Vict.} nineteenth years of Her present Majesty, chapter ^{c. 87.} eighty-seven, intituled "An Act to amend the Act for the better Care and Reformation of youthful Offenders, and the Act to render Reformatory and Industrial Schools in Scotland more available for the benefit of Vagrant Children ;"

The act of the session of the nineteenth and ^{19 & 20 Vict.} twentieth years of Her present Majesty, chapter ^{c. 109.} one hundred and nine, intituled "An Act to amend the Mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools ;"

The act of the session of the twentieth and ^{20 & 21 Vict.} twenty-first years of Her present Majesty, chapter ^{55.} fifty-five, intituled "An Act to promote the Establishment and Extension of Reformatory Schools in England ;"

Provided that such repeal shall not affect—

1. Any certificate given or anything duly done under any act hereby repealed :
2. Any penalty, forfeiture, or other punishment incurred under any act hereby repealed, or any remedy for recovering or enforcing the same.

38. This act shall apply to all reformatory schools certified under the acts hereby repealed, or any of them, and to all offenders sent to any reformatory school under the acts hereby repealed, or any of them, in the same manner in all respects as if such schools had been certified and such offenders had been sent thereto under this act, with this qualification, that no youthful offender shall be detained in any reformatory

^{Application of act to existing certified schools.}

school in pursuance of any order made under the repealed acts, or any of them, for a longer period than he would have been liable to be detained therein if this act had not been passed.

SCHEDULE.

FORMS.

(A.)

Conviction.

— } Be it remembered, that on the day of
to wit. } at in the said [county] of
A.B., under the age of sixteen years, to wit, of the age of
[thirteen] years, is convicted before us, two of Her Majesty's
justices of the peace for the said [county], for that [&c., state
offence in usual manner]; and we adjudge the said A.B., for
his said offence to be imprisoned in the [prison] at
in the said [county], [and to be there kept to hard labour] for
the space of :

And that, in pursuance of "The Reformatory Schools
Act, 1866," we also sentence the said A.B. (whose religious
persuasion appears to us to be) to be sent, at the
expiration of the term of imprisonment aforesaid, to
Reformatory School at in the county of (the
managers whereof are willing to receive him) [or to some
certified reformatory school to be hereafter, and before the
expiration of the term of imprisonment aforesaid, named in
this behalf], and to be there detained for the period of
commencing from and after the day of
[the date of the expiration of the sentence].

Given under our hands and seals, the day and year first
above mentioned, at in the [county] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(B.)

Order of Detention.

— } To the constable of , and to the keeper
to wit. } of the [prison] at in the said [county]
 of

Whereas A.B., late of [labourer], under the age of
sixteen years, to wit, of the age of [thirteen] years, was this
day duly convicted before the undersigned, two of Her
Majesty's justices of the peace in and for the said [county]
of , for that [&c., stating the offence as in the convic-
tion], and it was thereby adjudged that the said A.B., for

his said offence, should be imprisoned in the [prison] at in the said [county], [and be there kept to hard labour] for the space of ; and in pursuance of "The Reformatory Schools Act, 1866," the said A.B. (whose religious persuasion appeared to us to be) was thereby sentenced to be sent, at the expiration of the term of imprisonment aforesaid, to the Reformatory School at in the county of (the managers whereof are willing to receive him therein), [or to some certified reformatory school to be before the expiration of the said term named in that behalf,] and to be there detained for the period of commencing from and after the day of [the date of the expiration of the sentence]:

These are therefore to command you, the said constable of , to take the said A.B., and him safely convey to the [prison] at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And we do hereby command you, the said keeper of the said [prison], to receive the said A.B. into your custody in the said [prison], there to imprison him [and keep him to hard labour] for the space of : [And we further command you, the said keeper, to send the said A.B. at the expiration of his term of imprisonment aforesaid as and in the manner directed by the Reformatory Schools Act, 1866, to the Reformatory School at aforesaid [or to the reformatory school named by an order indorsed hereon under the hands and seals of us, or under the hand and seal of one other of Her Majesty's justices of the peace for the said county, being a visiting justice of the said prison], together with this order:] And for so doing this shall be your sufficient warrant.

Given under our hands and seals, this day of in the year of our Lord at in the [county] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(C.)

Nomination of School indorsed on the Order of Detention.

In pursuance of The Reformatory Schools Act, 1866, I, the undersigned, one of Her Majesty's justices of the peace for the [county] of hereby name the Reformatory School at in the county of as the school to which the within-named A.B. (whose religious persuasion appears to me to be) is to be sent as within provided [add where required in lieu of the school within (or above) named].

Given under my hand and seal, this day of at in the county of

E.F. (L.S.)

(D.)

Complaint for enforcing in England Contribution from Parent, &c.

— } The complaint of the inspector of reformatory
to wit. } schools [or as the case may be] made to us, the
undersigned, two of Her Majesty's justices of the peace for
the said county of , this day of at
in the same county, who says, that one A.B. of (*)
the age of years, or thereabouts, is now detained in
the Reformatory School at in the county of
, under the Reformatory Schools Act, 1866, and
has been duly ordered and directed to be detained therein
until the day of : That one C.B., dwelling
in the parish of in the county of , is the
parent [or step-parent, &c.] of the said A.B., and is of suffi-
cient ability to contribute to the support and maintenance of
the said A.B., his son : (*) The said complainant therefore
prays that the said C.B. may be summoned to show cause
why an order should not be made on him so to con-
tribute.

Exhibited before us,

C.D.

J.S.

L.M.

(E.)

*Summons to Parents, &c.**(This will be in Form (A.) in Schedule to 11 & 12 Vict. c. 43.)*

(F.)

Order on Parent, &c., in England to contribute a Weekly Sum.

— } Be it remembered, that on this day of
to wit. } at in the said [county] of a
certain complaint of the inspector of reformatory schools [or
as the case may be], for that one A.B. of, &c. [stating the cause
of complaint, as in the form (D.) between the asterisks (*) (*)],
was duly heard by and before us, the undersigned, two of
Her Majesty's justices of the peace in and for the said
[county] of (in the presence and hearing of the said
C.B., if so, or the said C.B. not appearing to the summons
duly issued and served in this behalf; and we, having duly
examined into the ability of the said C.B., and on conside-
ration of all the circumstances of the case, do order the said
C.B. to pay to the said inspector [or to an agent of the said
inspector] the sum of shillings per week from the
date of this order until the day of , the same
to be paid at the expiration of each [fourteen, or, as the
case may be, days].

Given under our hands and seals, the day and year
first above mentioned, at in the [county] aforesaid.

J.S. (I.S.)
L.M. (L.S.)

(G.)

Distress Warrant for Amount in arrear.

— } To the constable of , and to all other
to wit } peace officers in the said [county] of .

Whereas, on the hearing of a complaint made by the inspector of reformatory schools [or as the case may be], that A.B., of, &c. [stating the cause of complaint as in the form (D.) between the asterisks (*) (*)], an order was made on the day of by us, the undersigned [or by L.M. and J.H.], two of Her Majesty's justices of the peace in and for the said [county] of against the said C.B., to pay to the said inspector [or as the case may be] the sum of per week from the date of the said order until the day of , the same to be paid at the expiration of each [twenty-eight] days [or as the case may be] (*): And whereas there is due upon the said order the sum of , being for [three] periods of [fourteen] days each, and default has been made therein for the space of fourteen days.

These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C.B., and if within the space of [five] days next after the making of such distress the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, is not paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to , the clerk of the justices of the peace for the of , that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand to the said C.B.; and if no such distress can be found, then that you certify the same to us, to the end that such proceedings may be had therein as the law requires.

Given under our hands and seals, this day of , at , in the [county] aforesaid.

J.S. (L.S.)

L.M. (L.S.)

(H.)

Commitment in default of Distress.

— } To the constable of and to the keeper of
to wit } the [prison] at , in the said [county]
of

Whereas [&c., as in the form (G.) to the single asterisk (*), and then thus]: And whereas afterwards, on the day of last, I, the undersigned, together with L.M., Esquire [or J.S. and L.M., Esquires], two of Her Majesty's justices of the peace in and for the said [county] of issued a warrant to the constable of aforesaid, commanding him to levy the sum of due upon the said recited order, being for [three] periods of [fourteen] days, by

distress and sale of the goods and chattels of the said C.B.: And whereas a return has this day been made to me, the said justice [or the undersigned, one of Her Majesty's justices of the peace in and for the said [county] of], that no sufficient goods of the said C.B. can be found:

These are therefore to command you, the said constable of , to take the said C.B., and him safely to convey to the [prison] at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said [prison], to receive the said C.D. into your custody in the said [prison], there to imprison him for the term of , unless the said sum, and all costs and charges of the said distress, and of the commitment and conveying of the said C.D. to the said [prison], amounting to the further sum of , shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of
in the year of our Lord , at in the [county]
aforesaid.

J.S. (L.S.)

(J.)

Order on Parent in Scotland, &c., for Contribution.

The sheriff [or as the case may be] having considered the complaint of E.F., the inspector of reformatory schools, made under "The Reformatory Schools Act, 1866," and having heard parties thereon [or in absence of C.D., designating him, duly cited, but not appearing] pursuant to the said act, decerns C.D. complained on, weekly and every week from the day of to pay to the said E.F., or to his agent from time to time authorised to receive the same, the sum of shillings for the support and maintenance of A.B., son [or as the case may be] of the said C.D., now detained in the certified reformatory school of under an order by of date until the said A.B., attains the age of years or is lawfully discharged from the said school, and grants warrant of arrestment to be executed by any constable or messenger at arms.

Given under my hand this day of at
in the county aforesaid.

[Magistrate's signature.]

INDUSTRIAL SCHOOLS ACT.

(29 & 30 VICT. CAP. 118.)

An Act to consolidate and amend the Acts relating to Industrial Schools in Great Britain.—[10th August, 1866.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This act may be cited as "The Industrial Schools Act, 1866." Short title.

2. This act shall not extend to Ireland.

Extent of act.

3. The acts described in the first schedule to this act are hereby repealed ; but this repeal shall not affect the past operation of any such act, or the force or operation of any certificate, order, rule, or sentence made or passed, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before the passing of this act ; nor shall this act interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any act hereby repealed.

Acts described in first schedule repealed.

4. In this act—

The term "justice" applies to England only, and means a justice of the peace having jurisdiction in the place where the matter requiring the cognizance of a justice arises :

The term "two justices" applies to England only, and means two or more justices in petty sessions or the Lord Mayor or an alder-

Interpretation of terms.

man of the city of London, or a police or stipendiary magistrate or other justice having by law authority to act alone for any purpose with the powers of two justices.

The term "magistrate" applies to Scotland only, and includes sheriff, sheriff substitute, justice of the peace of a county, judge in a police court, and provost or baillie of a city or burgh :

The term "prison authority" with respect to England has the same meaning as in "The Prisons Act, 1865," and with respect to Scotland means the administrators of a prison as defined by "The Prisons (Scotland) Administration Act, 1860 :"

The term "parish" includes a place separately maintaining its own poor.

28 & 29 Vict.
c. 126.

23 & 24 Vict.
c. 105.

Industrial Schools.

Description
of industrial
schools and
managers.

5. A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an industrial school within the meaning of this act.

The persons for the time being having the management or control of such a school shall be deemed the managers thereof for the purposes of this act.

Inspector.

Inspector of
industrial
schools and
assistant.

6. Such one of Her Majesty's inspectors of prisons as one of Her Majesty's principal Secretaries of State (in this act referred to as the Secretary of State) from time to time thinks fit to appoint to be the inspector of reformatory schools shall be also the inspector of industrial schools.

The Secretary of State may from time to time appoint a fit person to assist the inspector; and every person so appointed shall have such of the

powers and duties of the inspector of industrial schools as the Secretary of State from time to time prescribes, but shall act under the direction of the inspector.

Certified Industrial Schools.

7. The Secretary of State may, on the application of the managers of an industrial school, direct the inspector of industrial schools to examine into the condition of the school, and its fitness for the reception of children to be sent there under this act, and to report to him thereon, and the inspector shall examine and report accordingly.

Mode of
certifying
industrial
school.

If satisfied with the report of the inspector the Secretary of State may, by writing under his hand, certify that the school is fit for the reception of children to be sent there under this act, and thereupon the school shall be deemed a certified industrial school.

8. A school shall not be at the same time a certified industrial school under this act and a certified reformatory school under any other act.

School not
to be certi-
fied as in-
dustrial an
reforma-
tory.

9. A notice of the grant of each certificate shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school to which it refers is in England or in Scotland.

Notices of
certificate
to be gazette

A copy of the *Gazette* containing the notice shall be conclusive evidence of the grant, which may also be proved by the certificate itself, or by an instrument purporting to be a copy of the certificate, and to be attested as such by the inspector of industrial schools.

Copy of
Gazette to
be evidence

10. Every certified industrial school shall from time to time, and at least once in each year, be inspected by the inspector of industrial schools, or by a person appointed to assist him as aforesaid.

Inspection
of school.

Alterations,
&c. of build-
ings to be
approved.

11. No substantial addition or alteration shall be made to or in the buildings of any certified industrial school without the approval in writing of the Secretary of State.

Contribu-
tion by
counties and
boroughs to
establish-
ment and
enlargement
of schools.

12. In England a prison authority may from time to time contribute such sums of money, and on such conditions as they think fit, towards the alteration, enlargement, or rebuilding of a certified industrial school,—or towards the support of the inmates of such a school,—or towards the management of such a school,—or towards the establishment or building of a school intended to be a certified industrial school,—or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school; provided,—

First, that not less than two months previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the county or borough, and also in the manner in which notices relating to business to be transacted by the prison authority are usually given :

Secondly, that where the prison authority is the council of a borough, the order for the contribution be made at a special meeting of the council :

Thirdly, that where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase.

In Scotland a county board may contribute to any certified industrial school with the consent and in the manner provided by "The Prisons (Scotland) Administration Act, 1860," respecting contributions to reformatories.

13. In order to obtain the approval of the Secretary of State as aforesaid where required, the managers of the school, or promoters of the intended school, shall forward to the Secretary of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building, drawn on such scale, and accompanied by such particulars and estimate of cost, as the Secretary of State thinks fit to require; and the Secretary of State may approve of the particulars and plan submitted to him, with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified by writing under his hand.

Mode of obtaining approval of Secretary of State.

Classes of Children to be detained in certified Industrial Schools.

14. Any person may bring before two justices or a magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions, namely,—

As to children under 14 years of age found begging, &c

That is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale any thing), or being in any street or public place for the purpose of so begging or receiving alms;

That is found wandering and not having any home or settled place of abode or proper guardianship, or visible means of subsistence;

That is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;

That frequents the company of reputed thieves.

The justices or magistrate before whom a child is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient to deal with him under this act, may order him to be sent to a certified industrial school.

As to
children
under 12
years of age
charged
with of-
fences.

15. Where a child apparently under the age of twelve years is charged before two justices or a magistrate with an offence punishable by imprisonment or a less punishment, but has not been in England convicted of felony, or in Scotland of theft, and the child ought, in the opinion of the justices or magistrate, (regard being had to his age and to the circumstances of the case,) to be dealt with under this act, the justices or magistrate may order him to be sent to a certified industrial school.

As to
refractory
children
under 14
years of age
in charge of
parent, &c.

16. Where the parent or step-parent or guardian of a child apparently under the age of fourteen years represents to two justices or a magistrate that he is unable to control the child, and that he desires that the child be sent to an industrial school under this act, the justices or magistrate, if satisfied on inquiry that it is expedient to deal with the child under this act, may order him to be sent to a certified industrial school.

As to
refractory
children
under 14
years of age
in work-
houses,
pauper
schools, &c.

17. Where the guardians of the poor of a union or of a parish wherein relief is administered by a board of guardians, or the board of management of a district pauper school, or the parochial board of a parish or combination, represent to two justices or a magistrate that any child apparently under the age of fourteen years maintained in a workhouse or pauper school of a union or parish, or in a district pauper school, or in the poorshouse of a parish or combination, is refractory, or is the child of parents either of whom has been convicted of a crime or offence punish-

able with penal servitude or imprisonment, and that it is desirable that he be sent to an industrial school under this act, the justices or magistrates may, if satisfied that it is expedient to deal with the child under this act, order him to be sent to a certified industrial school.

Order of Detention.

18. The order of justices or a magistrate sending a child to a school (in this act referred to as the order of detention in a school) shall be in writing signed by the justices or magistrate, and shall specify the name of the school.

Form and contents of order sending child to school.

The school shall be some certified industrial school (whether situate within the jurisdiction of the justices or magistrate making the order or not) the managers of which are willing to receive the child; and the reception of the child by the managers of the school shall be deemed to be an undertaking by them to teach, train, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

The school named in the order shall be presumed to be a certified industrial school until the contrary is shown.

In determining on the school the justices or magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion.

The order shall specify the time for which the child is to be detained in the school, being such time as to the justices or magistrates seems proper

for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years.

Temporary
detention in
workhouse,
&c.

19. Two justices or a magistrate, while inquiry is being made respecting a child or respecting a school to which he may be sent, may, by order signed by them or him, order the child to be taken to the workhouse or poorshouse of the union, parish, or combination in which he is found or resident,—or where (in Scotland) there is no such poorshouse, or the poorshouse is at an inconvenient distance, to such other place, not being a prison, as the magistrate thinks fit, the occupier whereof is willing to receive him,—and to be detained therein at the cost of the union, parish, or combination for any time not exceeding seven days, or until an order is sooner made for his discharge or for his being sent to a certified industrial school; and the guardians of the poor for the union or parish, or the keeper of the poorshouse, or other person to whom the order is addressed, are and is hereby empowered and required to detain him accordingly.

Power to
parent, &c.
to apply to
remove
child to a
school con-
ducted in
accordance
with child's
religious
persuasion.

20. If the parent, step-parent, or guardian, or if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative, of a child sent or about to be sent to a certified industrial school which is not conducted in accordance with the religious persuasion to which the child belongs, states to the justices or magistrate by whom the order of detention has been or is about to be made (or to two justices or a magistrate having the like jurisdiction) that he objects to the child being sent to or detained in the school specified or about to be specified in the order, and names another certified industrial school in Great Britain which is conducted in accordance with the religious persuasion to which the child belongs, and signifies his desire that the child be

sent thereto, then and in every such case the justices or magistrate shall, upon proof of such child's religious persuasion, comply with the request of the applicant, provided,—

First, that the application be made before the child has been sent to a certified industrial school, or within thirty days after his arrival at such a school :

Secondly, that the applicant show to the satisfaction of the justices or magistrate that the managers of the school named by him are willing to receive the child :

Provided always, with respect to Scotland, that if any child who has become chargeable to any parish, and who is under this section sent from Scotland to a school out of Scotland, might have been removed from Scotland (under any act for the time being in force relating to the relief of the poor in Scotland) at the instance of the inspector of the poor of the parish to which he has become chargeable, had he not been sent out of Scotland under this section, then and in every such case the chargeability on such parish for such child shall cease on his being so sent out of Scotland.

21. In Scotland, where a magistrate is about to make or has made an order for sending a child to a certified industrial school, and the child is chargeable at the time to any parish, or has been so chargeable within three months then last past, and there is in that parish a certified industrial school maintained by the parochial board thereof, and conducted in accordance with the religious persuasion to which the child belongs, and the inspector of the poor of such parish certifies to the magistrate (or to a magistrate having the like jurisdiction) that he requires the child to be sent to the certified industrial school in such parish maintained by the parochial board thereof, and conducted in accordance with the religious per-

Where order to be for detention in school of parochial board.

suasion to which the child belongs, then and in every such case the magistrate shall direct the child to be sent to the last-mentioned school accordingly, the inspector of the poor defraying the expense of conveying the child thither; provided that where the order of detention has been made, the application of the inspector to the magistrate be made within fourteen days of the day of the making of the order.

Order to be
warrant for
conveyance
and deten-
tion.

22. The order of detention in a school shall be forwarded to the managers of the school with the child, and shall be a sufficient warrant for the conveyance of the child thither, and his detention there.

Expenses of
conveyance
to school.

23. The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authorities by whom he is conveyed, and shall be deemed part of the current expenses of those police authorities.

Evidence of
order of
detention.

24. An instrument purporting to be an order of detention in a school and to be signed by two justices or a magistrate, or purporting to be a copy of such an order and to be certified as such a copy by the clerk to the justices or magistrate by whom the order was made, shall be evidence of the order.

Management of School.

Religious
instruction
in school.

25. A minister of the religious persuasion specified in the order of detention as that which the child appears to the justices or magistrate to belong may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State for the purpose of instructing him in religion.

Lodging
child out of
school.

26. The managers of a school may permit a child sent there under this act to lodge at the

dwelling of his parent or of any trustworthy and respectable person, so that the managers teach, train, clothe, and feed the child in the school as if he were lodging in the school itself, and so that they report to the Secretary of State, in such manner as he thinks fit to require, every instance in which they exercise a discretion under this section.

27. The managers of a school may, at any time after the expiration of eighteen months of the period of detention allotted to a child, by licence under their hands, permit him to live with any trustworthy and respectable person named in the licence, and willing to receive and take charge of him. Licence for living out of school.

Any licence so granted shall not be in force for more than three months, but may at any time before the expiration of those three months be renewed for a further period not exceeding three months, to commence from the expiration of the previous period of three months, and so from time to time until the period of the child's detention is expired.

Any such licence may also be revoked at any time by the managers of the school by writing under their hands, and thereupon the child to whom the licence related may be required by them, by writing under their hands, to return to the school.

The time during which a child is absent from a school in pursuance of a licence shall, except where such licence has been forfeited by his misconduct, be deemed to be part of the time of his detention in the school, and at the expiration of the time allowed by the licence he shall be taken back to the school.

A child escaping from the person with whom he is placed under a licence, or refusing to return to the school on the revocation of his licence, or

at the expiration of the time allowed thereby, shall be deemed to have escaped from the school.

Power to
apprentice
child.

28. The managers of a school may, at any time after a child has been placed out on licence as aforesaid, if he conducted himself well during his absence from the school, bind him, with his own consent, apprentice to any trade, calling, or service, notwithstanding that his period of detention has not expired, and every such binding shall be valid and effectual to all intents.

Rules of
school to be
approved by
Secretary of
State.

29. The managers of a certified industrial school may from time to time make rules for the management and discipline of the school, not being inconsistent with the provisions of this act; but those rules shall not be enforced until they have been approved in writing by the Secretary of State; and rules so approved shall not be altered without the like approval.

A printed copy of rules purporting to be the rules of a school so approved and to be signed by the inspector of industrial schools shall be evidence of the rules of the school.

Evidence as
to reception
in school, &c.

30. A certificate purporting to be signed by one of the managers of a certified industrial school or their secretary, or by the superintendent or other person in charge of the school to the effect that the child therein named was duly received into and is at the signing thereof detained in the school, or has been duly discharged or removed therefrom or otherwise disposed of according to law, shall be evidence of the matters therein stated.

Liability to
removal not
affected by
stay at
school.

31. The time during which a child is detained in a school under this act shall for all purposes be excluded in the computation of time mentioned in section one of the act of the session of the ninth and tenth years of Her Majesty's reign (chapter sixty-six), "to amend the Laws relating

to the removal of the poor," as amended by any other act.

Offences at School, &c.

32. If a child sent to a certified industrial school, and while liable to be detained there, being apparently above ten years of age, and whether lodging in the school itself or not, wilfully neglects or wilfully refuses to conform to the rules of the school, he shall be guilty of an offence against this act, and on summary conviction thereof before two justices or a magistrate shall be liable to be imprisoned, with or without hard labour, for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of "The Reformatory Schools Act, 1866."

Refusal to conform to rules.

29 & 30 Vict. c. 117.

33. If a child sent to a certified industrial school, and while liable to be detained there, and whether lodging in the school itself or not, escapes from the school, or neglects to attend thereat, he shall be guilty of an offence against this act, and may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other act to the contrary notwithstanding) be then brought before a justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable on summary conviction before such a justice or magistrate, to be, by and at the expense of the managers of the school, brought back to the same school, there to be detained during a period equal to so much of his period of detention as remained

Penalty on child escaping from school.

unexpired at the time of his committing the offence.

If the child charged with such an offence is apparently above ten years of age, then on his summary conviction of the offence before two such justices or such a magistrate, he shall be liable, at the discretion of the justices or magistrate, instead of being sent back to the same school, to be imprisoned with or without hard labour for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of "The Reformatory Schools Act, 1866."

30 Vict.
117.

Penalty on
persons
inducing
offenders to
escape from
certified
industrial
schools.

34. If any person does any of the following things, (that is to say,)—

First, knowingly assists, directly or indirectly, a child liable to be detained in a certified industrial school to escape from the school;

Second, directly or indirectly induces such a child so to escape;

Third, knowingly harbours or conceals a child who has so escaped, or prevents him from returning to school, or knowingly assists in so doing,—

Every such person shall be guilty of an offence against this act, and shall, on summary conviction thereof before two justices or a magistrate, be liable to a penalty not exceeding twenty pounds, or, at the discretion of the justices, to be imprisoned for any term not exceeding two months, with or without hard labour.

Expenses of Children in Schools.

Power to
Treasury to
contribute

35. The Commissioners of Her Majesty's Treasury may from time to time contribute, out of

money provided by Parliament for the purpose, such sums as the Secretary of State from time to time thinks fit to recommend towards the custody and maintenance of children detained in certified industrial schools; provided that such contributions shall not exceed two shillings per head per week for children detained on the application of their parents, step-parents, or guardians.

towards
custody, &c.
of children
detained.

36. In England a prison authority may contract with the managers of a certified industrial school for the reception and maintenance therein of such children as are from time to time ordered by justices to be sent there from the district of the prison authority.

Power to
prison au-
thority to
contract for
reception of
children in
schools.

37. The guardians of the poor of a union or parish, or the board of management of a district pauper school, or the parochial board of a parish or combination, may from time to time, with the consent in England of the Poor Law Board, and in Scotland of the Board of Supervision, contribute such sums as they think fit towards the maintenance of children detained in a certified industrial school on their application.

Power to
guardians of
poor, &c. to
contribute.

38. In Scotland where a child sent to a certified industrial school under this act is at the time of his being so sent, or within three months then last past has been, chargeable to any parish, the parochial board and inspector of the poor of the parish of the settlement of such child, if the settlement of the child is in any parish in Scotland, shall, as long as he continues so chargeable, be liable to repay to the Commissioners of Her Majesty's Treasury all expenses incurred in maintaining him at school under this act to an amount not exceeding five shillings per week, and in default of payment those expenses may be recovered by the inspector of industrial schools, or any agent of the inspector, in a summary manner

Recovery of
cost of
main-
tenance in
schools in
Scotland,
when
parishes, &c.
are liable.

before a magistrate having jurisdiction in the place where the parish is situate.

Provided always, that nothing in this act shall prevent any parochial board on whose funds the cost of support of any such child has become a charge from adopting such steps for the recovery of any sums which may have been paid by such parochial board for any such child against the parish of his settlement, or for his removal, as may be competent to them under any act for the time being in force relating to the relief of the poor in Scotland.

Contribu-
tion by
parent, &c.

39. The parent, step-parent, or other person for the time being legally liable to maintain a child detained in a certified industrial school shall, if of sufficient ability, contribute to his maintenance and training therein a sum not exceeding five shillings per week.

Order for
enforcement
of contribu-
tion by
parent, &c.

40. On the complaint of the inspector of industrial schools, or of any agent of the inspector, or of any constable under the directions of the inspector (with which directions every constable is hereby required to comply), at any time during the detention of a child in a certified industrial school, two justices or a magistrate having jurisdiction at the place where the parent, step-parent, or other person liable as aforesaid resides may, on summons to the parent, step-parent, or other person liable as aforesaid, examine into his ability to maintain the child, and may, if they or he think fit, make an order or decree on him for the payment to the inspector or his agent of such weekly sum, not exceeding five shillings per week, as to them or him seems reasonable, during the whole or any part of the time for which the child is liable to be detained in the school.

Every such order or decree may specify the time during which the payment is to be made, or may

direct the payment to be made until further order.

In Scotland any such order or decree shall be held to be and to have the effect of an order or decree in each and every week for payment of the sum ordered or decreed to be paid for such week; and under the warrant for arrestment therein contained (which the magistrate is hereby authorised to grant if he sees fit), it shall be lawful to arrest weekly for payment of such weekly sum as aforesaid the wages of the defender due and current, and such arrestment shall attach not only to the wages due and payable to the defender at the date thereof, but also to the wages current for the week or other term or period in which such arrestment is executed, any law or statute notwithstanding.

Every such payment or a proper proportionate part thereof shall go in relief of the charges on Her Majesty's Treasury, and the same shall be accounted for as the Commissioners of Her Majesty's Treasury direct, and where the amount of the payment ordered in respect of any child exceeds the amount contributed by the Commissioners of Her Majesty's Treasury in respect of that child, the balance shall be accounted for and paid to the managers of the school.

The Secretary of State may, in his discretion, remit wholly or partially any payment so ordered.

Two justices or a magistrate having jurisdiction to make such an order or decree may from time to time vary any such order or decree as circumstances require, on the application either of the person on whom such order or decree is made, or of the inspector of industrial schools, or his agent, on fourteen days notice being first given of such application to the inspector or agent, or to such person respectively.

Discharge, &c. of Children from School.

41. A person who has attained the age of six- Detention to
cease on

child attain- teen years shall not be detained in a certified
ing sixteen. industrial school, except with his own consent in
writing.

Transfer to 42. The Secretary of State may at any time
another order a child to be transferred from one certified
school by industrial school to another, but so that the whole
Secretary of period of his detention be not thereby increased.
State.

The Secretary of State may also at any time order a child being under sentence of detention in an industrial school established under any other act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, to be transferred to a certified industrial school under this act; and in that case the child shall after the transfer be deemed to be subject in all respects to the provisions of this act, but so that the whole period of his detention be not by such transfer increased.

The commissioners of Her Majesty's Treasury may pay, out of money provided by Parliament for the purpose, such sum as the Secretary of State thinks fit to recommend, in discharge of the expenses of the removal of any child transferred under the provisions of this act.

Discharge 43. The Secretary of State may at any time
by Secretary order any child to be discharged from a certified
of State. industrial school or from any industrial school established under any other act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, either absolutely or on such condition as the Secretary of State approves, and the child shall be discharged accordingly.

Withdrawal, &c., of Certificate of School.

Power for 44. The Secretary of State, if dissatisfied with
Secretary of the condition of a certified industrial school, may
State to withdraw certificate. at any time, by notice under his hand addressed to and served on the managers thereof, declare

that the certificate of the school is withdrawn as from a time specified in the notice, not being less than six months after the date thereof; and at that time the certificate shall be deemed to be withdrawn accordingly, and the school shall thereupon cease to be a certified industrial school.

45. The managers or the executors or administrators of a deceased manager (if only one) of a certified industrial school may give notice in writing to the Secretary of State of their intention to resign the certificate of that school, and at the expiration in the case of managers of six months, and in the case of executors or administrators of one month, from the receipt of that notice by the Secretary of State (unless before that time the notice is withdrawn) the certificate shall be deemed to be resigned accordingly, and the school shall thereupon cease to be a certified industrial school.

Resignation
of certificate
by mana-
gers.

46. A notice of the withdrawal or resignation of the certificate of a certified industrial school shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school is in England or Scotland.

Gazetting
and evi-
dence of
withdrawal,
&c.

A copy of the gazette containing such notice shall be conclusive evidence of such withdrawal or resignation.

A certificate shall be presumed to be in force until the withdrawal or resignation thereof is proved.

47. Where notice is given of the withdrawal or resignation of the certificate of a certified industrial school no child shall be received into the school for detention under this act after the receipt by the managers of the school of the notice of withdrawal, or after the date, notice of resignation, as the case may be; but the obligation of

Cesser of
reception of
children on
notice, &c.

the managers to teach, train, clothe, lodge, and feed any children detained in the school at the time of such receipt or at the date of such notice shall, except as far as the Secretary of State otherwise directs, be deemed to continue until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

Discharge of
children de-
tained, &c.

48. Where a school ceases to be a certified industrial school the children detained therein shall be either discharged or transferred to some other certified industrial school by order of the Secretary of State.

Houses of Refuge, &c., in Scotland.

In Scotland,
power for
industrial
schools
under local
acts, &c. to
receive
children.

49. Where in any city, town, or place in Scotland there has been erected, under local act of Parliament or otherwise, any house of refuge for destitute children or any industrial school, or other similar institution, the commissioners, directors, or managers thereof may receive and maintain therein, if willing to do so, all such children as are sent thereto under this act, and may pay such portion of the fund under their control as they think proper for the training, maintenance, and disposal of such children; provided that such house of refuge, school, or institution is certified as an industrial school under this act, and the rules thereof and all alterations thereof from time to time are approved by the Secretary of State.

Expenses of Prison Authorities, &c.

Expenses of
prison au-
thorities and
county

50. Expenses incurred by a prison authority in England in carrying into effect the provisions of this act shall be deemed expenses incurred by

that authority in carrying into effect the provisions of "The Prison Act, 1865," and shall be defrayed accordingly. boards how defrayed.

Expenses incurred by a county board in Scotland in carrying into effect the provisions of this act shall be a charge on the assessment for current expenses incurred by that board in carrying into effect the provisions of "The Prisons (Scotland) Administration Act, 1860."

Miscellaneous.

51. The following acts—

In England, the act of the session of the eleventh and twelfth years of Her Majesty's reign (chapter forty-three), "to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders," and any acts amending the same;

Acts regulating procedure.

In Scotland, "The Summary Procedure Act, 1864,"—

Shall apply to all offences, payments, and orders in respect of which jurisdiction is given to justices or a magistrate by this act, or which are by this act directed to be prosecuted, enforced, or made in a summary manner or on summary conviction.

52. No summons, notice, or order made for the purpose of carrying into effect the provisions of this act shall be invalidated for want of form only; and the forms in the schedule to this act annexed, or forms to the like effect, may be used in the cases to which they refer, with such variations as circumstances require, and when used shall be deemed sufficient.

Use of forms in schedule.

53. Any notice may be served on the managers of a certified industrial school by being delivered to any one of them personally, or by being sent

Service of notices on managers.

by post or otherwise in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers, or of their secretary.

Application
of act to
existing
certified
schools.

54. This act shall apply to all certified industrial schools being such at the passing of this act, and to all children sent thereto before the passing of this act, but no child shall be detained at any industrial school, in pursuance of any order made before the passing of this act, for a longer period than he would have been liable to be detained if this act had not been passed.

THE FIRST SCHEDULE.

Acts Repealed.

| | |
|-----------------------|---|
| 24 & 25 Vict. c. 113. | The Industrial Schools Act, 1861. |
| 24 & 25 Vict. c. 132. | The Industrial Schools (Scotland) Act, 1861. |
| 25 & 26 Vict. c. 10. | An Act for continuing for a further limited Time, and for extending the Operation of Orders made under the Industrial Schools Act, 1861, and the Industrial Schools (Scotland) Act, 1861. |

THE SECOND SCHEDULE.

FORMS.

(A.)

Order sending Child to Industrial School.

— } Be it remembered, that on the day of
to wit. } in pursuance of the Industrial Schools
Act, 1866, we, two of Her Majesty's justices of the peace for
the said [county] of , do order that A.B. of
(whose religious persuasion appears to us to be)
being a child subject to the provisions of section of
the said act, be sent to the certified industrial school
at, and that he be detained there during

(Signed)

L.M.
N.O.

(C.)

Complaint for enforcing in England Contribution from Parent, &c.

— } The complaint of the inspector of industrial
to wit. } schools [or as the case may be] made to us, the
undersigned, two of Her Majesty's justices of the peace for
the said county of this day of at
in the same county, who says, that one A.B. of (*) the age
of years, or thereabouts, is now detained in the
industrial school at in the county of
, under the Industrial Schools Act, 1866, and has
been duly ordered and directed to be detained therein until
the day of : That one C.B. dwelling in the
parish of in the county of is the parent [or
step-parent, &c.] of the said A.B., and is of sufficient ability
to contribute to the support and maintenance of the said
A.B., his son: (*) The said complainant therefore prays
that the said C.B. may be summoned to show cause why an
order should not be made on him so to contribute.

Exhibited before us,

C.D.

J.S.
L.M.

(D.)

*Summons to Parent, &c.**(This will be in Form (A.) in Schedule to 11 & 12 Vict. c. 43.)*

(E.)

Order on Parent, &c., to contribute a Weekly Sum.

— } Be it remembered, that on this day of
to wit. } at in the said [county] of
a certain complaint of the inspector of industrial schools [or
as the case may be], for that one A.B. of, &c. [stating the
cause of complaint as in the form (C.) between the asterisks
(*) (*)], was duly heard by and before us, the undersigned,
two of Her Majesty's justices of the peace in and for the said
[county] of (in the presence and hearing of the said
C.B., if so, or the said C.B. not appearing to the summons
duly issued and served in this behalf); and we, having duly
examined into the ability of the said C.B. and on considera-
tion of all the circumstances of the case, do order the said
C.B. to pay to the said inspector [or to an agent of the said
inspector] the sum of shillings per week from the
date of this order until the day of , the same
to be paid at the expiration of each [fourteen, or as the case
may be, days].

Given under our hands and seals, the day and year first
above mentioned, at in the [county] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(F.)

Distress Warrant for Amount in Arrear.

— } To the constable of , and to all other
to wit. } peace officers in the said [county] of

Whereas on the hearing of a complaint made by the inspector of industrial schools, [*or as the case may be,*] that A.B. of, &c. [*stating the cause of complaint as in the form (C.) between the asterisks (*) (*)*], an order was made on the day of by us, the undersigned [*or by L.M. and J.H.*], two of Her Majesty's justices of the peace in and for the said [county] of against the said C.B., to pay to the said inspector [*or as the case may be*] the sum of per week from the date of the said order until the day of , the same to be paid at the expiration of each [*twenty-eight*] days [*or as the case may be*] (*): And whereas there is due upon the said order the sum of being for [*three*] periods of [*fourteen*] days each, and default has been made therein for the space of fourteen days:

These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C.B., and if within the space of [*five*] days next after the making of such distress the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, is not paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the justices of the peace for the of that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said C.B.; and if no such distress can be found, then that you certify the same to us, to the end that such proceedings may be had therein as the law requires.

Given under our hands and seals, this day of at in the [county] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(G.)

Commitment in Default of Distress.

— } To the constable of and to the keeper of
to wit. } the [prison] at in the said [county] of

WHEREAS [*&c., as in the form (F.) to the single asterisk (*) and then thus*]: And whereas afterwards on the day of last, I, the undersigned, together with L.M., Esquire, [*or J.S. and L.M., Esquires,*] two of Her Majesty's justices of the peace in and for the said [county] of issued a warrant to the constable of aforesaid, commanding him to levy the sum of due upon the said recited order, being for [*three*] periods of [*fourteen*] days, by distress and sale of the goods and chattels of the said

C.B. : And whereas a return has this day been made to me the said justice [*or the undersigned, one of Her Majesty's justices of the peace in and for the said [county] of*], that no sufficient goods of the said C.B. can be found :

These are therefore to command you, the said constable of to take the said C.B., and him safely to convey to the [*prison*] at aforesaid, and there deliver him to the keeper thereof, together with this precept : And I do hereby command you, the said keeper of the said [*prison*], to receive the said C.B. into your custody in the said [*prison*], there to imprison him for the term of , unless the said sum, and all costs and charges of the said distress, and of the commitment and conveying of the said C.B. to the said [*prison*], amounting to the further sum of , shall be sooner paid unto you the said keeper ; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord , at in the [*county*] aforesaid.

J.S (L.S.)

(H.)

*Order in Scotland on Parent for Payment towards
Maintenance of Child.*

The sheriff [*or as the case may be*] having considered the complaint of E.F., the inspector of industrial schools, made under the Industrial Schools Act, 1866, and having heard parties thereon [*or, in absence of C.D., designing him, duly cited but not appearing*], pursuant to the said act, decerns C.D. complained on, weekly and every week from the day of to pay to the said E.F., or to his agent from time to time authorised to receive the same, the sum of shillings for the maintenance and training of A.B., son [*or as the case may be*] of the said C.D., now detained in the certified industrial school of under an order by of date until the said child attains the age of sixteen years or is lawfully discharged from the said school, and grants warrant of arrestment to be executed by any constable or messenger at arms.

Given under my hand this day of at in the county aforesaid.

[*Magistrate's signature.*]

CRIMINAL LAW AMENDMENT ACT.

(30 & 31 VICT. CAP. 35.)

An Act to remove some Defects in the Administration of the Criminal Law.—[20th June, 1867.]

WHEREAS it is found that delay and inconvenience are frequently caused by the provisions contained in the first section of the act twenty-second and twenty-third Victoria, chapter seventeen, in cases not within the mischief for remedy whereof the same act was made and passed, and it is expedient to restrict the operation thereof :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same :

Limitation
of 22 & 23
Vict. c. 17.

1. That the said provisions of the said first section of the said act shall not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said act, if such count or counts be such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts be founded (in the opinion of the court in or before which the same bill of indictment be preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace, in the presence of the person accused or proposed to be accused by such bill of indictment, and transmitted or delivered to such court in due course of law ; and nothing in the said act shall extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment, if such bill be presented to

the grand jury with the consent of the court in or before which the same may be preferred.

2. Whenever any bill of indictment shall be preferred to any grand jury, under the provisions of the act twenty-second and twenty-third Victoria, chapter seventeen, against any person who has not been committed to or detained in custody, or bound by recognizance to answer such indictment, and the person accused thereby shall be acquitted thereon, it shall be lawful for the court before which such indictment shall be tried, in its discretion to direct and order that the prosecutor or other person by or at whose instance such indictment shall have been preferred shall pay unto the accused person the just and reasonable costs, charges, and expenses of such accused person and his witnesses (if any) caused or occasioned by or consequent upon the preferring of such bill of indictment, to be taxed by the proper officer of the court; and upon nonpayment of such costs, charges, and expenses within one calendar month after the date of such direction and order it shall be lawful for any of the superior courts of law at Westminster, or any judge thereof, or for the justices and judges of the Central Criminal Court (if the bill of indictment has been preferred in that court), to issue against the person on whom such order is made such and the like writ or writs, process or processes, as may now be lawfully issued by any of the said superior courts for enforcing judgments thereof.

On acquittal, &c. of person indicted; who had not been committed or held to bail, court may order prosecutor to pay costs to accused if it think the prosecution unreasonable.

3. And whereas complaint is frequently made by persons charged with indictable offences, upon their trial, that they are unable by reason of poverty to call witnesses on their behalf, and that injustice is thereby occasioned to them; and it is expedient to remove, as far as practicable, all just ground for such complaint: Therefore, in all cases

Accused person to be asked by justice if he desire to call witnesses.

where any person shall appear or be brought before any justice or justices of the peace, charged with any indictable offence, whether committed within this realm or upon the high seas or upon land beyond the sea, and whether such person appear voluntarily upon summons, or has been apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person for trial or admit him to bail, shall, immediately after obeying the directions of the eighteenth section of the act eleventh and twelfth Victoria, chapter forty-two, demand and require of the accused person whether he desires to call any witnesses; and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such justice or justices shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and transmitted in due course of law with the depositions, and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the justice or justices give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend

Their depositions to be taken and returned to court of trial if accused person call any.

and be applicable to the depositions of witnesses hereby directed to be taken.

4. All the provisions of the said Act eleventh and twelfth Victoria, chapter forty-two, relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this act.

Provisions of
11 & 12 Vict.
c. 42, ex-
tended to
this act.

5. The court before which any accused person shall be prosecuted or tried, or for trial, before which he may be committed or bailed to appear for any felony or misdemeanor, is hereby authorised and empowered, in its discretion, at the request of any person who shall appear before such court on recognizance to give evidence on behalf of the person accused, to order payment unto such witness so appearing such sum of money as to the court shall seem reasonable and sufficient to compensate such witness for the expenses, trouble, and loss of time he shall have incurred or sustained in attending before the examining magistrate, and at or before such court; and the amount of such expenses of attending before the examining magistrate, and compensation for trouble and loss of time therein, shall be ascertained by the certificate of such magistrate, granted before the attendance in court; and the amount of all other expenses and compensation shall be ascertained by the proper officer of the court, who shall, upon receipt of the sum of sixpence for each witness, make out and deliver to the person entitled thereto an order for such expenses and compensation, together with the said fee of sixpence, upon such and the same treasurers and officers as would now by law be liable to payment of an order for the expenses of the prose-

If witnesses
for accused,
bound by re-
cognizance,
appear at
the trial,
court may
allow ex-
penses.

cutor or witnesses against such accused person; and if the accusation be of such kind that the court shall have no power to order the expenses of the prosecutor, then upon the treasurer or other officer in the capacity of a treasurer of the county, riding, division, city, borough, or place where the offence of such accused person may be alleged to have been committed, which treasurer or other officer is hereby required to pay the same orders upon sight thereof, and shall be allowed the same in his accounts: provided always, that in no case shall any such allowances or compensation exceed the amount now by law permitted to be made to prosecutors and witnesses for the prosecution; and provided always, that such allowances and compensation shall be allowed and paid as part of the expenses of the prosecution.

Power to take deposition of person dangerously ill, and not likely to recover, and to make same evidence in certain events after death of such person.

6. And whereas by the seventeenth section of the act eleventh and twelfth Victoria, chapter forty-two, it is permitted under certain circumstances to read in evidence on the trial of an accused person the deposition taken in accordance with the provisions of the said act of a witness who is dead, or so ill as to be unable to travel: And whereas it may happen that a person dangerously ill, and unable to travel, may be able to give material and important information relating to an indictable offence, or to a person accused thereof, and it may not be practicable or permissible to take, in accordance with the provisions of the said act, the examination or deposition of the person so being ill, so as to make the same available as evidence in the event of his or her death before the trial of the accused person, and it is desirable in the interests of truth and justice that means should be provided for perpetuating such testimony, and for rendering the same available in the event of the death of the person giving the

same : Therefore, whenever it shall be made to appear to the satisfaction of any justice of the peace that any person dangerously ill, and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any justice or justices of the peace to take an examination or deposition in accordance with the provisions of the said act of the person so being ill, it shall be lawful for the said justice to take in writing the statement on oath or affirmation of such person so being ill, and such justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the name of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the court for trial at which such accused person shall have been so committed or bailed ; and in all other cases he shall transmit the same to the clerk of the peace of the county, division, city, or borough in which he shall have taken the same, who is hereby required to preserve the same, and file it of record ; and if afterwards, upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the justice

by or before whom it purports to be taken, and provided it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same.

Provision
for the
prisoner
being pre-
sent at
taking of
statement.

7. Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the judge or justice of the peace by whom the prisoner was committed, or the visiting justices of the prison in which he is confined, may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

Provisions
of 24 & 25
Vict. c. 66,
as to wit-
nesses who
object to be
sworn, ex-
tended to
jurors.

8. And whereas relief has been given by the statute twenty-fourth and twenty-fifth Victoria, chapter sixty-six, to persons refusing, from alleged conscientious motives, to be sworn as witnesses in criminal proceedings, and it is expedient to extend that relief to persons required to serve as jurors: Therefore if any person summoned or required to serve as a juror in any civil or criminal proceeding shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer or person qualified to administer an oath to a juror, upon being satisfied of the sincerity of such objection, to permit such person, instead of being

sworn, to make his or her solemn affirmation or declaration in the words following :

“I A.B. do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful ; and I do also solemnly, sincerely, and truly affirm and declare,” &c.

Which solemn affirmation shall be of the same force and effect, and if untrue shall entail all the same consequences, as if such person had taken an oath in the usual form ; and whenever in any legal proceedings it is necessary or usual to state or allege that jurors have been sworn, it shall not be necessary to specify that any particular juror has made affirmation or declaration instead of oath, but it shall be sufficient to state or allege that the jurors have been “ sworn or affirmed.”

9. Where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offence, which includes the stealing of any property, and it shall appear to the court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser.

Money found on prisoner to be given to purchaser of property not known to be stolen, on restitution of property.

10. Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any court of criminal jurisdiction, and a bill of indictment shall be found against him, and such person shall be then in the prison belonging to the jurisdiction of such court, under warrant of commitment, or under sentence for some other offence, it shall

Governor of prison to bring up the body of any person indicted, without writ of Habeas Corpus, under order of court.

be lawful for the court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without writ of *habeas corpus*, and the said governor shall thereupon obey such order.

Extent of
act.

11. This act shall not extend to Ireland.

Commence-
ment of act.

12. This act shall come into operation on the first day of October, one thousand eight hundred and sixty-seven.

JUSTICES OF THE PEACE ACT.

(30 & 31 VICT. CAP. 115.)

An Act to remove Disqualifications of Justices of the Peace in certain Cases.—[20th August, 1867.]

In order that justices of the peace may act in the execution of acts in some cases in which they now are incapable of so acting, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

Short title.

1. This act may for all purposes be cited as "Justices of the Peace Act, 1867."

Justices not
incapable of
acting in
execution of
acts in cases
specified.

2. A justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of—

(a.) His being as one of several ratepayers, or as one of any other class of persons liable

in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

NAVAL STORES (No. 2) ACT.

(30 & 31 VICT. CAP. 119.)

An Act for the Protection of Naval Stores.—
[20th August, 1867.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as "The Naval Stores Act, 1867." Short title.

2. This act shall not extend to Scotland or Ireland. Extent of act.

3. In this act—

The term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the commissioners for executing the office of Lord High Admiral: Interpretation of terms.

The term "dealer in marine stores" means a person bound to conform to the regulations of "The Merchant Shipping Act, 1854," section four hundred and eighty: 17 & 18 Vict. c. 104, s. 480.

The term "dealer in old metals" has the same meaning as in "The Old Metal Dealers Act, 1861": 24 & 25 Vict. c. 110.

The term "stores" includes all goods and chattels and any single store or article.

27 & 28 Vict.
c 91, re-
pealed, but
not to apply
to offences
before pass-
ing this act.

4. "The Naval and Victualling Stores Act, 1864," is hereby repealed; but this repeal or anything in this act shall not apply to or in respect of any offence, act, or thing committed or done before the passing of this act, save that this act shall apply to stores bearing any such mark or part of a mark as in this act mentioned, whether applied before or after the passing of this act.

Marks in
schedule ap-
propriated
for naval
stores.

5. The marks described in the schedule to this act may be applied in or on stores therein described in order to denote Her Majesty's property in stores so marked.

It shall be lawful for the Admiralty, their contractors, officers, and workmen, to apply those marks or any of them in or on any such stores.

If any person, without lawful authority (proof of which authority shall lie on the party accused), applies any of those marks in or on any such stores, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Obliteration,
with intent
to conceal,
&c., felony.

6. If any person with intent to conceal Her Majesty's property in any stores, takes out, destroys, or obliterates, wholly or in part, any such mark as aforesaid, he shall be guilty of felony, and shall, on conviction thereof, be liable, in the discretion of the court before which he is convicted, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or with solitary confinement.

Knowingly
receiving,
&c. marked
stores a
misde-
meanor.

7. If any person, without lawful authority (proof of which authority shall lie on the party accused), receives, possesses, keeps, sells, or delivers any stores bearing any such mark as afore-

said, or any part of any such mark, knowing them to bear such mark or part of a mark, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

8. Where the person charged with such a misdemeanor as last aforesaid was at the time at which the offence is charged to have been committed in Her Majesty's service, or in the service of the Admiralty, or a dealer in marine stores, or in old metals, or a pawnbroker, knowledge on his part that the stores to which the charge relates bore such a mark or part of a mark as aforesaid shall be presumed until the contrary is shown.

Knowledge of stores being marked being presumed against dealers, &c.

9. A person charged with such a misdemeanor as last aforesaid in relation to stores the value whereof does not exceed five pounds shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding twenty pounds, or, in the discretion of the justice, to be imprisoned for any term not exceeding six months, with or without hard labour.

Summary conviction in certain cases.

10. If stores are found in the possession of a person being in Her Majesty's service or in the service of the Admiralty, or being a dealer in marine stores or in old metals, or a pawnbroker, and he is taken or summoned before a justice of the peace, and such stores do not bear any such mark or part of a mark as aforesaid, but the justice sees reasonable grounds for believing them to be or to have been Her Majesty's property, then if such person does not satisfy the justice that he came by the stores so found lawfully, he shall be liable, on summary conviction before the justice, to a penalty not exceeding five pounds.

Penalty on dealer, &c. found in possession of unmarked stores, and not accounting.

11. A conviction under this act of a dealer in

Effect of conviction

of dealer in
old metals.

old metals shall, for the purposes of registration and its consequences under "The Old Metal Dealers Act, 1861," be equivalent to a conviction under that act.

Persons not
dealers in
marine
stores, &c.,
found in
possession,
and not
satisfac-
torily ac-
counting for
them, liable
to a penalty.

12. In order to prevent a failure of justice in some cases by reason of the difficulty of proving knowledge of the fact that stores bore such a mark as aforesaid,—

If stores bearing such a mark or part of a mark are found in the possession of a person not being in Her Majesty's service or in the service of the Admiralty, and not being a dealer in marine stores or in old metals, or a pawnbroker, the following provisions shall have effect:—

- (1.) If such person, when taken or summoned before a justice of the peace, does not satisfy the justice that he came by the stores so found lawfully, he shall be liable, on conviction by the justice, to a penalty not exceeding five pounds.
- (2.) If he satisfies the justice that he came by the stores so found lawfully, the justice, at his discretion, as the evidence given and the circumstances of the case require, may summon before him every person through whose hands such stores appear to have passed, and if any such person as last aforesaid who has had possession thereof does not satisfy the justice that he came by the same lawfully, he shall be liable, on summary conviction before a justice, to a penalty not exceeding five pounds.

Criminal
possession
of stores
explained
for purposes
of act.

13. For the purposes of this act stores shall be deemed to be in the possession or keeping of any person if he knowingly has them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or

not, and whether the same are so had for his own use or benefit or for the use or benefit of another.

14. A constable of the Metropolitan Police Force may, within the yard and limits for which he is sworn, stop, search, and detain any vessel, boat, or carriage in or on which there is reason to suspect that any of Her Majesty's stores stolen or unlawfully obtained may be found, or any person reasonably suspected of then and there having in his possession any such stores stolen or unlawfully obtained.

Policemen of metropolitan force may stop suspected persons, &c.

15. The following sections of the act of the session of the twenty-fourth and twenty-fifth years of Her Majesty's reign (chapter ninety-six), "to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences," shall be incorporated with this act, and shall for the purposes of this act be read as if they were here re-enacted, namely, sections ninety-eight to one hundred, one hundred and three, one hundred and seven to one hundred and thirteen, and one hundred and fifteen to one hundred and twenty-one, all inclusive; and for this purpose the expression "this act," when used in the sections herein incorporated, shall be taken to include the present act.

Sections 98, 99, 100, 103, 107, to 113, and 115 to 121 of 24 & 25 *Vict. c.* 96, incorporated with this act.

16. It shall not be lawful for any person, without permission in writing from the Admiralty, or from some person authorised by the Admiralty in that behalf (proof of which permission shall lie on the party accused), to gather or search for stores, or to creep, sweep, or dredge in the sea or any tidal water, within one hundred yards from any vessel belonging to Her Majesty or in Her Majesty's service, or from any mooring-place or anchoring-place appropriated to such vessels, or from any moorings belonging to Her Majesty, or from any of Her Majesty's wharves, or dock, victualling, or

Prohibition of sweeping, &c., within 100 yards of dockyards, &c.

steam factory yards, or in or on any part of the spaces or distances from time to time marked out as ranges for artillery practice for the use of Her Majesty's ships at Portsmouth, Devonport, or elsewhere, whether covered with water or not.

Penalty.

If any person acts in contravention of this provision he shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding five pounds, or to be imprisoned for any term not exceeding three months, with or without hard labour.

Penalties, &c. to be applied under orders of Admiralty.

17. Notwithstanding anything in any act relating to municipal corporations or to the Metropolitan Police Force or in any other act, any pecuniary penalty or other money recovered under this act shall be paid or applied as the Admiralty direct.

Not to prevent persons being indicted under this act, &c.

18. Nothing in this act shall prevent any person from being indicted under this act or otherwise for any indictable offence made punishable on summary conviction by this act, or prevent any person from being liable under any other act or otherwise to any other or higher penalty or punishment than is provided for any offence by this act, so that no person be punished twice for the same offence.

Amendment of sect 45 of 28 & 29 Vict. c. 89.

19. Section forty-five of "The Greenwich Hospital Act, 1865," shall be read and have effect as if this act instead of "The Naval and Victualling Stores Act, 1864," were referred to in that section.

Amendment of 28 & 29 Vict. c. 112, as to repeal of certain sections of 9 & 10 Will. 3, c. 41.

20. The repeal by "The Admiralty Acts Repeal Act, 1865," of sections one, two, four, five, and eight of the act of the session of the ninth and tenth years of the reign of King William the Third (chapter forty-one), "for the better preventing the imbezzlement of His Majesty's stores of war, and preventing cheats, frauds, and abuses in paying seamen's wages," is hereby

repealed as far as those sections relate to any stores except naval or victualling stores, or other stores belonging to or under the charge or control of the Admiralty, or to Scotland or Ireland, and to that extent those sections are hereby revived ; but nothing herein contained shall interfere with the operation of any other act of the present session.

SCHEDULE.

Marks appropriated for Her Majesty's use in or on Stores.

| Stores. | Marks. |
|---|--|
| Hempen cordage and wire rope | White, black, or coloured worsted threads laid up with the yarns and the wire respectively. |
| Canvas, fearnought, ham- mocks, and seamen's bags | A blue line in a serpentine form. |
| Buntin | A double tape in the warp |
| Candles | Blue or red cotton threads in each wick, or wicks of red cotton. |
| Timber, metal, and other stores not before enume- rated | The broad arrow. |

CAPITAL PUNISHMENT WITHIN PRISONS ACT.

(31 VICT. CAP. 24.)

An Act to provide for carrying out of Capital Punishment within Prisons.—[29th May, 1868.]

WHEREAS it is expedient that capital punishments should be carried into effect within prisons : Be it

enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This act may be cited for all purposes as "The Capital Punishment Amendment Act, 1868,"

Judgment of death to be executed within walls of prison. 2. Judgment of death to be executed on any prisoner sentenced after the passing of this act on any indictment or inquisition for murder shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution.

Sheriff, &c. to be present. 3. The sheriff charged with the execution, and the gaoler, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, shall be present at the execution.

Any justice of the peace for the county, borough, or other jurisdiction to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff or the visiting justices of the prison proper to admit within the prison for the purpose, may also be present at the execution.

Surgeon to certify death; and declaration to be signed by sheriff, &c. 4. As soon as may be after judgment of death has been executed on the offender, the surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the sheriff.

The sheriff and the gaoler and chaplain of the prison, and such justices and others persons present (if any) as the sheriff requires or allows, shall also sign a declaration to the effect that judgment of death has been executed on the offender.

Coroner's inquest on body. 5. The coroner of the jurisdiction to which the prison belongs wherein judgment of death is

executed on any offender shall within twenty-four hours after the execution hold an inquest on the body of the offender, and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender; and the inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

No officer of the prison or prisoner confined therein shall in any case be a juror on the inquest.

6. The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him; provided that if one of Her Majesty's principal Secretaries of State is satisfied on the representation of the visiting justices of a prison that there is not convenient space within the walls thereof for the burial of offenders executed therein, he may, by writing under his hand, appoint some other fit place for that purpose, and the same shall be used accordingly. Burial of body.

7. One of Her Majesty's principal Secretaries of State shall from time to time make such rules and regulations to be observed on the execution of judgment of death in every prison as he may from time to time deem expedient for the purpose, as well of guarding against any abuse in such execution as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place. Power to Secretary of State to make rules, &c. to be observed on execution of judgment of death.

8. All such rules and regulations shall be laid upon the tables of both houses of Parliament within six weeks after the making thereof, or if Parliament be not then sitting within fourteen days after the next meeting thereof. Such rules to be laid before Parliament.

9. If any person knowingly and wilfully signs any false certificate or declaration required by this Penalty for signing false certificate, &c.

act, he shall be guilty of a misdemeanor, and on conviction thereof shall be liable, at the discretion of the court, to imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Certificate, &c. to be sent to Secretary of State, and exhibited on or near entrance to prison.

10. Every certificate and declaration and the duplicate of the inquisition required by this act shall in each case be sent with all convenient speed by the sheriff to one of Her Majesty's principal Secretaries of State, and printed copies of the same several instruments shall as soon as possible be exhibited and shall for twenty-four hours at least be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed.

Provisions as to duties and powers of sheriff, &c., extended.

11. The duties and powers by this act imposed on or vested in the sheriff may be performed by and shall be vested in his under-sheriff or other lawful deputy acting in his absence and with his authority, and any other officer charged in any case with the execution of judgment of death.

The duties and powers by this act imposed on or vested in the gaoler of the prison may be performed by and shall be vested in the deputy gaoler (if any) acting in his absence and with his authority, and (if there is no officer of the prison called the gaoler) by the governor, keeper, or other chief officer of the prison and his deputy (if any) acting as aforesaid.

The duties and powers by this act imposed on or vested in the surgeon may be performed by and shall be vested in the chief medical officer of the prison (if there is no officer of the prison called the surgeon).

The duties by this act imposed on the chaplain may, in the event of the absence of the chaplain, be performed by the assistant chaplain or other person acting in the place of the chaplain.

12. The forms given in the schedule to this act, with such variations or additions as circumstances require, shall be used for the respective purposes in that schedule indicated, and according to the directions therein contained.

Forms in
schedule.

13. This act shall apply to Scotland, with the modifications following; viz.,

Modifica-
tions of act
in Scotland

The expression "judgment of death" shall mean "sentence of death" pronounced by any competent court.

"Indictment" shall include "criminal letters."

Any duty appointed to be performed to or by, or any power given to, a sheriff in England, shall in Scotland be performed to or by, or be exercised by, the lord provost, or provost and other magistrates charged with seeing the sentence of death carried into effect, or by any one of their number specially named by the others for that purpose.

The expression "the visiting justices of the prison" shall in Scotland mean the members of the county prison board, acting under the provisions of the act twenty-third and twenty-fourth Victoria, chapter one hundred and five.

In lieu of the provision contained in the sixth section hereof, the procurator fiscal of the jurisdiction within which the prison is situated wherein sentence of death is executed on any offender shall within twenty-four hours after the execution hold a public inquiry before the sheriff or sheriff substitute of the county on the body of the offender, and in particular shall inquire into and ascertain the identity of the body, and whether sentence of death was duly executed on the offender; and the report or deliverance of the sheriff or sheriff substitute shall be in duplicate, and one of the originals shall be delivered to the lord provost or provost, or

magistrates or magistrate, charged with seeing the sentence of death carried into effect.

The expression "a misdemeanor" shall mean "a crime and offence."

The expression "the duplicate of the inquisition" in the tenth section hereof shall mean "the duplicate of the report or deliverance of the sheriff or sheriff substitute."

Application
of act to
Ireland.

14. In the application of this act to Ireland the expressions "chief secretary to the Lord Lieutenant," and "Board of Superintendence," shall be substituted for the expressions "one of Her Majesty's principal Secretaries of State," and "visiting justices," respectively.

Saving
clause as to
legality of
execution.

15. The omission to comply with any provision of this act shall not make the execution of death illegal in any case where such execution would otherwise have been legal.

General
saving.

16. Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if this act had not passed.

THE SCHEDULE.

Certificate of Surgeon.

I, A.B., the surgeon [*or as the case may be*] of the [*describe prison*], hereby certify that I this day examined the body of C.D., on whom judgment of death was this day executed in the [*describe same prison*]; and that on that examination I found that the said C.D. was dead.

Dated this day of

(Signed) A.B.

Declaration of Sheriff and others.

We, the undersigned, hereby declare that judgment of death was this day executed on C.D. in the [*describe prison*] in our presence.

Dated this day of

(Signed) E.F., Sheriff of
 L.M., Justice of the Peace for
 G.H., Gaoler of
 J.K., Chaplain of
 Jc. Jc.

DOCUMENTARY EVIDENCE ACT.

(31 & 32 VICT. CAP. 37.)

An Act to amend the Law relating to Documentary Evidence in certain Cases.—[25th June, 1868.]

WHEREAS it is expedient to amend the law relating to evidence: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as Short title.
 "The Documentary Evidence Act, 1868."

2. *Primâ facie* evidence of any proclamation, order, or regulation issued before or after the passing of this act by Her Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued before or after the passing of this act by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule hereto, may be given in all courts of justice, and in all legal proceedings whatsoever, in all or any of the modes hereinafter mentioned; that is to say:

- (1.) By the production of a copy of the gazette purporting to contain such proclamation, order, or regulation.
- (2.) By the production of a copy of such

Mode of
 proving cer-
 tain docu-
 ments

proclamation, order, or regulation purporting to be printed by the Government printer, or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of such British colony or possession.

- (3.) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty or by the Privy Council, of a copy or extract purporting to be certified to be true by the clerk of the Privy Council or by any one of the lords or others of the Privy Council, and, in the case of any proclamation, order, or regulation issued by or under the authority of any of the said departments or officers, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said schedule in connection with such department or officer.

Any copy or extract made in pursuance of this act may be in print or in writing, or partly in print and partly in writing.

No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this act, to the truth of any copy of or extract from any proclamation, order, or regulation.

Act to be in force in colonies.

3. Subject to any law that may be from time to time made by the legislature of any British colony or possession, this act shall be in force in every such colony and possession.

Punishment of forgery.

4. If any person commits any of the offences following, that is to say,—

- (1.) Prints any copy of any proclamation, order, or regulation which falsely purports to have been printed by the Government printer, or to be printed under the autho-

urity of the legislature of any British colony or possession, or tenders in evidence any copy of any proclamation, order, or regulation which falsely purports to have been printed as aforesaid, knowing that the same was not so printed ; or,

- (2.) Forges or tenders in evidence, knowing the same to have been forged, any certificate by this act authorised to be annexed to a copy of or extract from any proclamation, order, or regulation ;

he shall be guilty of felony, and shall on conviction be liable to be sentenced to penal servitude for such term as is prescribed by "The Penal Servitude Act, 1864," as the least term to which an offender can be sentenced to penal servitude, or to be imprisoned for any term not exceeding two years, with or without hard labour.

5. The following words shall in this act have the meaning herein-after assigned to them, unless there is something in the context repugnant to such construction ; (that is to say,)

Definition of terms.

"British colony and possession" shall for the purposes of this act include the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in Her Majesty by virtue of any act of Parliament for the government of India and all other Her Majesty's dominions.

"British colony and possession."

"Legislature" shall signify any authority other than the Imperial Parliament or Her Majesty in Council competent to make laws for any colony or possession.

"Legislature."

"Privy Council" shall include Her Majesty in Council and the lords and others of Her Majesty's Privy Council, or any of them, and any committee of the Privy Council that is not specially named in the schedule hereto.

"Privy Council."

"Government printer."

"Government printer" shall mean and include the printer to Her Majesty and any printer purporting to be the printer authorised to print the statutes, ordinances, acts of state, or other public acts of the legislature of any British colony or possession, or otherwise to be the government printer of such colony or possession.

"Gazette."

"Gazette" shall include the *London Gazette*, the *Edinburgh Gazette*, and the *Dublin Gazette*, or any of such gazettes.

Act to be cumulative.

6. The provisions of this act shall be deemed to be in addition to, and not in derogation of, any powers of proving documents given by any existing statute or existing at common law.

SCHEDULE.

| Column 1. | Column 2. |
|--|--|
| Name of Department or Officer. | Names of Certifying Officers. |
| The Commissioners of the Treasury. | Any Commissioner, Secretary, or Assistant Secretary of the Treasury. |
| The Commissioners for executing the Office of Lord High Admiral. | Any of the Commissioners for executing the office of Lord High Admiral or either of the secretaries to the said commissioners. |
| Secretaries of State. | Any Secretary or Under-Secretary of State. |
| Committee of Privy Council for Trade. | Any member of the Committee of Privy Council for Trade or any secretary or assistant secretary of the said committee. |
| The Poor Law Board. | Any Commissioner of the Poor Law Board or any secretary or assistant secretary of the said board. |

VAGRANT ACT AMENDMENT ACT.

(31 & 32 VICT. CAP. 52.)

An Act to amend the Act for punishing idle and disorderly Persons, and Rogues and Vagabonds, so far as relates to the Use of Instruments of Gaming.—[13th July, 1868.]

WHEREAS it is expedient to amend an act passed in the fifth year of the reign of his Majesty King George the Fourth, chapter eighty-three, intituled “An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England” : 5 Geo. 4,
c. 83.

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This act may be cited for all purposes as Short title.
“The Vagrant Act Amendment Act, 1868.”

2. This act and the recited act shall be Construc-
tion of acts.
construed as one act.

3. Every person playing or betting by way of wagering or gaming in any street, road, highway, or other open and public place, or in any place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering on gaming at any game or pretended game of chance, shall be deemed a rogue and vagabond within the true intent and meaning of the recited act, and as such may be convicted and punished under the provisions of that act. Extending
provisions
to gaming
with coin,
&c.

Commence-
ment of act.

4. This act shall commence and take effect on and after the first day of October one thousand eight hundred and sixty-eight.

LARCENY AND EMBEZZLEMENT ACT.

(31 & 32 VICT. CAP. 116.)

An Act to amend the Law relating to Larceny and Embezzlement.—[31st July, 1868.]

WHEREAS it is expedient to provide for the better security of the property of copartnerships and other joint beneficial owners against offences by part owners thereof, and further to amend the law relating to embezzlement: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Member of copartnership guilty of converting to his own use, &c. property of co-partnership liable to be tried as if not such member.

1. If any person, being a member of any copartnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such copartnership or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such copartnership or one of such beneficial owners.

Provisions of 18 & 19 Vict. c. 126, extended to embezzlement by

2. All the provisions of the act passed in the session of Parliament held in the eighteenth and nineteenth years of Her present Majesty's reign, intituled "An Act for diminishing Expense and

Delay in the Administration of Criminal Justice in certain Cases," shall extend and be applicable to the offence of embezzlement by clerks or servants, or persons employed for the purpose or in the capacity of clerks or servants, and the said act shall henceforth be read as if the said offence of embezzlement had been included therein.

3. This act shall not extend to Scotland.

clerks or
servants.

Extent of
act.

ABOLITION OF IMPRISONMENT FOR DEBT ACT.

(32 & 33 VICT. CAP. 62.)

An Act for the Abolition of Imprisonment for Debt, for the Punishment of fraudulent Debtors, and for other Purposes.—[9th August, 1869.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

Preliminary.

1. This act may be cited for all purposes as "The Debtors Act, 1869."

2. This act shall not extend to Scotland or Ireland.

Short title

Extent of
act.

3. This act shall not come into operation until the day on which "The Bankruptcy Act, 1869," comes into operation, which day is hereinafter referred to as the commencement of this act, and words and expressions defined or explained in "The Bankruptcy Act, 1869," shall have the same meaning in this act.

Commence-
ment and
construction
of act.

PART I. *Abolition of Imprisonment for Debt.*

Abolition of
imprison-
ment for
debt, with
exceptions.

4. With the exceptions hereinafter mentioned, no person shall, after the commencement of this act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment :

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract :
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace :
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control :
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order :
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order :
6. Default in payment of sums in respect of the payment of which orders are in this act authorised to be made :

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year ; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Saving of power of committal for small debts.

Provided—(1.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions ; that is to say,

- (a.) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued :
- (b.) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs :
- (c.) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just ; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting

in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order :

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the "County Court Act, 1846," and that act and the acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

Power under
certain cir-
cumstances
to arrest

6. After the commencement of this act a person shall not be arrested upon mesne process in any action.

Where the plaintiff in any action in any of Her Majesty's superior courts of law at Westminster, in which, if brought before the commencement of this act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action that he will not go out of England without the leave of the court.

defendant
about to quit
England.

Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

7. Where any person is, at the commencement of this act, in custody in pursuance of a writ, attachment, or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this act, such person shall, at the commencement of this act, be discharged from such custody without payment

Discharge
of persons
in custody
at the com-
mencement
of this act.

of any fees, but his arrest, imprisonment, or discharge shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor.

Where at the commencement of this act special bail has been given in any action the defendant in which after the commencement of this act cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail, instead of being that the judgment shall be satisfied or the defendant rendered to prison, shall be deemed to be that the defendant shall not go out of England without leave of the court.

Saving for
sequestra-
tion against
property.

8. Sequestration against the property of a debtor may, after the commencement of this act, be issued by any court of equity in the same manner as if such debtor had been actually arrested.

Saving for
Bankruptcy
Act, 1869.

9. Nothing in this part of this act shall in any way affect any right or power, under "The Bankruptcy Act, 1869," to arrest or imprison any person.

Definition
of "pre-
scribed."

10. In this part of this act the term "prescribed" means as follows :—

As respects the superior courts of common law, prescribed by general rules to be made in pursuance of "The Common Law Procedure Act, 1852 ;"

As respects the superior courts of equity, prescribed by general rules and orders to be made in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter eighty ;

As respects the county courts, prescribed by general rules to be made under "The County Court Act, 1856 ;" and

As respects any other court, prescribed by the rules to be made, with the approval of the Lord Chancellor, by the persons having power to make rules in relation to the practice of such court; or if there be no such persons, by the judge of such court:

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this act.

PART II. *Punishment of Fraudulent Debtors.*

11. Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of "The Bankruptcy Act, 1869," shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour; that is to say,

Punishment
of fraudu-
lent debtors.

1. If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud:
2. If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud:

3. If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :
4. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :
5. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards :
6. If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud :
7. If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof :
8. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
9. If after the presentation of a bankruptcy

petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :

10. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
11. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs :
12. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement he attempts to account for any part of his property by fictitious losses or expenses :
13. If within four months next before the

presentation of a bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same :

14. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud :
15. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud :⁽¹⁾

(¹) *Debtors Act*, 32 & 33 Vict. c. 62, s. 11, *sub-sect.* 15.—A grocer obtained goods of his trade upon credit. Soon after receiving them, and before they were paid for, he executed a bill of sale in favour of his sister, who lived with him. This bill of sale, which was given in consideration of a debt owing from him to his sister, passed away all his stock-in-trade and effects whatsoever, including the above-mentioned unpaid-for goods. Having been made a bankrupt, he was indicted for a misdemeanor under the 11th section of the 32 & 33 Vict. c. 62 ("The Debtors Act, 1869"). Held, that the production of the adjudication under the seal of the court was sufficient evidence of the bankruptcy. That disposing of the goods by bill of sale was not disposing of them in the "ordinary way of trade," and therefore, that as property obtained on credit, and not paid for, had passed by the bill of sale, he came within the section, unless he had no intention to defraud; but that assigning the whole of his property to one creditor, reserving nothing for the others, showed an intent to defraud. Held, also, that where the prosecution of a bankrupt under "The Debtors Act, 1869," is not ordered by

16. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation.

12. If any person who is adjudged a bankrupt or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months before such presentation or commencement, quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for a time not exceeding two years, with or without hard labour.

Penalty for absconding with property.

13. Any person shall in each of the cases following be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour; that is to say,

Penalty on fraudulently obtaining credit, &c.

- (1.) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud:
- (2.) If he has with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property:
- (3.) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before

any court, the judge at the trial has no power to allow the costs of the prosecution: (*Reg. v. Thomas*, 22 L. T. Rep. 138.)

the date of any unsatisfied judgment or order for payment of money obtained against him.

False claim,
&c. a mis-
demeanor.

14. If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of "The Bankruptcy Act, 1869," wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanor, punishable with imprisonment not exceeding one year, with or without hard labour.

Debts in-
curred by
fraud.

15. Where a debtor makes any arrangement or composition with his creditors under the provisions of "The Bankruptcy Act, 1869," he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Order by
court for
prosecution
on report of
trustee.

16. Where a trustee in any bankruptcy reports to any court exercising jurisdiction in bankruptcy that in his opinion a bankrupt has been guilty of any offence under this act, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the bankrupt has been guilty of any offence under this act, the court shall, if it appears to the court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

Expenses of
prosecutions

17. Where the prosecution of the bankrupt under this act is ordered by any court, then, on the production of the order of the court, the expenses of the prosecution shall be allowed, paid,

and borne as expenses of prosecutions for felony are allowed, paid, and borne.

18. Every misdemeanor under the second part of this act shall be deemed to be an offence within and subject to the provisions of the act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious Indictments for certain Misdemeanors;" and when any person is charged with any such offence before any justice or justices, such justice or justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

Application
of Vexatious
Indictments
Act to of-
fences under
this act.

19. In an indictment for an offence under this act it shall be sufficient to set forth the substance of the offence charged, in the words of this act specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading adjudication, or any proceedings in, or order, warrant, or document of any court acting under the Bankruptcy Act, 1869.

Form of
indictment.

20. So much of the act of the session of the fifth and sixth years of Her Majesty's reign (chapter thirty-eight), "to define the jurisdiction of justices in general and quarter sessions of the peace," as excludes from the jurisdiction of justices and recorders at sessions of the peace or adjournments thereof the trial of persons for offences against any provision of the laws relating to bankrupts, is hereby repealed as from the passing of this act; and any offence under this act shall be deemed to be within the jurisdiction of such justices and recorders.

Quarter
sessions to
have juris-
diction in
respect of
offences
under act.

21. The provisions of the act of the session of the fifth and sixth years of William the Fourth, chapter seventy-six, for the regulation of muni-

Mayors, &c.
disqualified
by arrange-
ments.

cipal corporations, sections fifty-two and fifty-three, as to the disqualification of mayors, aldermen, and town councillors having been declared bankrupt or having compounded by deed with their creditors, shall extend to every arrangement or composition by a mayor, alderman, or town councillor with his creditors under the Bankruptcy Act, 1869, whether the same is made by deed or otherwise.

Justices of the peace becoming bankrupt or arranging with creditors.

22. If any person being assigned by Her Majesty's commission to act as a justice of the peace is adjudged bankrupt, or makes any arrangement or composition with his creditors under the Bankruptcy Act, 1869, he shall be and remain incapable of acting as a justice of the peace until he has been newly assigned by Her Majesty in that behalf.

Punishments under this act cumulative.

23. Where any person is liable under any other act of Parliament or at common law to any punishment or penalty for any offence made punishable by this act, such person may be proceeded against under such other act of Parliament or at common law or under this act, so that he be not punished twice for the same offence.

PART III. *Warrants of Attorney, Cognovits, and Orders for Judgment.*

Warrants of attorney and cognovit actionem to be executed in the presence of an attorney on behalf of the person.

24. After the commencement of this act, a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there is present some attorney of one of the superior courts on behalf of such person expressly named by him and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare

himself to be attorney for the person executing the same, and state that he subscribes as such attorney.

25. A warrant of attorney to confess judgment or *cognovit actionem* not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same.

Warrant, &c.
not formally
executed
invalid.

26. Where in an action a warrant of attorney to confess judgment or a *cognovit actionem* is given, and the same, or a true copy thereof, is not filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days next after the execution thereof as required by the act of the third year of the reign of King George the Fourth (chapter thirty-nine), "for preventing frauds upon creditors by secret warrants of attorney to confess judgment," the same shall be deemed fraudulent and shall be void; and if any such warrant of attorney or *cognovit actionem* so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant or cognovit before the filing thereof, otherwise the warrant or cognovit shall be void.

Filing of
warrant of
attorney and
*cognovit
actionem*.

27. Where a judge's order made by consent is given by a defendant in a personal action whereby the plaintiff is authorised forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject to any defeasance or condition or not, then if the action is in the Court of Queen's Bench the order, and if the action is in any other court a true copy of the order, shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the

Filing of
judge's
order to
enter up
judgment.

officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days after the making of the order, otherwise the order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application
of 3 Geo. 4,
c. 39. and
6 & 7 Vict.
c. 66, to
judge's
orders.

28. The provisions of the said act of the third year of King George the Fourth, and of the act of the session of the sixth and seventh years of Her Majesty's reign (chapter sixty-six), "to enlarge the provisions of an act for preventing frauds upon creditors by secret warrants of attorney to confess judgment," for liberty to file a warrant of attorney or *cognovit actionem*, or a copy thereof, with the clerk of the docquets and judgments, and for that clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such judge's order.

Exemption
from act of
foreign at-
tachment.

29. Nothing in this act contained shall affect the custom of foreign attachment as exercised by any competent court, or the proceedings in relation to such custom.

EVIDENCE FURTHER AMENDMENT ACT.

(32 & 33 VICT. CAP. 68.)

An Act for the further Amendment of the Law of Evidence.—[9th August, 1869.]

WHEREAS the discovery of truth in courts of justice has been signally promoted by the removal of restrictions on the admissibility of witnesses, and it is expedient to amend the law of evidence with the object of still further promoting such discovery :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The fourth section of chapter ninety-nine of the statutes passed in the fourteenth and fifteenth years of Her present Majesty, and so much of the second section of the "Evidence Amendment Act, 1853," as is contained in the words "or in any proceeding instituted in consequence of adultery," are hereby repealed.

Sect. 4 of 14 & 15 Vict. c. 99, and part of sect. 2 of 16 & 17 Vict. c. 83, repealed.

2. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action : provided always, that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

Parties in actions for breach of promise of marriage.

3. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding : provided that no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

Parties and their husbands and wives to be witnesses in suits for adultery.

4. If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration :

Persons objecting to take oath may be allowed to make declaration, and be triable for perjury.

“I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.”

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.

Short title. 5. This act may be cited for all purposes as the “Evidence Further Amendment Act, 1869.”

Extent of act. 6. This act shall not extend to Scotland.

HABITUAL CRIMINALS ACT.

(32 & 33 VICT. CAP. 99.)

An Act for the more effectual Prevention of Crime.
[9th August, 1869.]

WHEREAS it is expedient to make further provision for the suppression of crimes committed by convicts at large on licence or by other offenders :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title. 1. This act may be cited as “The Habitual Criminals Act, 1869.”

Definition of terms. 2. In this act the term “court” includes any justice or justices of the peace or other person or persons having jurisdiction in the matter to which the term refers. “Chief officer of police” shall mean within the district of the London metropolitan police force the commissioner of police, or

an assistant commissioner, or a district superintendent; in the city of London the commissioner of police; within the police district of Dublin metropolis any one of the commissioners of police for the said district; and elsewhere shall include any of the following persons,—in England, any chief constable, head constable, or other chief officer of police or of a division of police, by whatever name such chief officer may be called; the expression “stipendiary magistrate” shall include a metropolitan police magistrate; and in Ireland, any inspector, sub-inspector, head or other constable of the Royal Irish Constabulary acting as chief officer of constabulary within any district or town. Where in any of the provisions of this act the expression “stipendiary magistrate” is used, such provisions shall be interpreted in Scotland as if the expression “sheriff or sheriff substitute” had been used.

PART I. *Convicts at large on Licence.*

3. Any constable or police officer may, if authorised so to do in writing by a chief officer of police, without warrant, take into custody any convict who is the holder of a licence granted under the Penal Servitude Acts, 1853, 1857, and 1864, or any of them, and whom he has reason to believe to be getting a livelihood by dishonest means, and may bring him before two or more justices of the peace or a stipendiary magistrate.

Power to apprehend holders of licence on suspicion.

If it shall appear from the facts proved before such justices or magistrate that there are reasonable grounds for such belief, his licence shall be forfeited in the same manner as if he had been convicted of an indictable offence, and the justices or magistrate before whom he is brought shall commit him to any prison within their or his jurisdiction, there to remain until he can conveniently be removed to some prison in which

convicts under sentence of penal servitude may lawfully be confined, in order that he may there undergo the term of penal servitude to which he is liable under the said Penal Servitude Acts or some of them.

Penalty for
breach of
conditions of
licence.

4. Where in any licence granted under the said Penal Servitude Acts, or any of them, any conditions different from or in addition to those contained in schedule A. of "The Penal Servitude Act, 1864," are inserted, the holder of such licence shall, on a breach of such conditions, be deemed guilty of an offence, in the same manner as if such conditions were contained in the said schedule A.

There shall be repealed so much of the fourth section of "The Penal Servitude Act, 1864," as requires the holder of a licence to report himself personally once in each month.

A copy of any conditions annexed to any licence granted under the Penal Servitude Acts, other than the conditions contained in schedule A. of "The Penal Servitude Act, 1864," shall be laid before Parliament within twenty-one days after the making thereof, if Parliament be then sitting, or if not, then within fourteen days after the commencement of the next session of Parliament.

PART II. *Registration of Criminals.*

Register of
criminals.

5. For the better supervision of criminals a register of all persons convicted of crime in England shall be kept in London, under the management of the commissioner of police for the metropolis, or of such other person as one of Her Majesty's principal Secretaries of State may appoint, and in Dublin a like register shall be kept, under the management of the commissioners of police for the police district of Dublin metropolis, or of such other person as the Lord Lieutenant or other chief governor or governors of

Ireland may appoint, in such form, with such evidences of identity, and containing such particulars, and subject to such regulations as may from time to time be prescribed by one of Her Majesty's principal Secretaries of State in England, or in Ireland by the Lord Lieutenant. All expenses incurred with the sanction of the Commissioners of the Treasury in keeping such register shall be paid out of moneys provided by Parliament.

6. In order to make such register complete, and to make the supervision over criminals effectual, the gaolers or governors of county and borough prisons, and the chief officers of police in every county, borough, and other place in the United Kingdom which maintains a separate police, shall from time to time make returns, if such prison, county, borough, or other place be in Great Britain, to one of Her Majesty's principal Secretaries of State, and if the same be situate in Ireland to the Lord Lieutenant or other chief governor or governors of Ireland, or to such person as they may respectively appoint, in such manner, and at such time, and containing such evidences of identity and other information with respect to persons convicted of crime, as they may from time to time respectively direct.

Returns for purposes of register.

All expenses incurred in any place in carrying this section into effect with the sanction of the authority authorised to allow charges on the funds for the maintenance of the police in that place shall be deemed to be part of the expenses of such police, and be defrayed accordingly.

7. The first two parts of this act, so far as is consistent with the tenor thereof, shall be construed as one with the said Penal Servitude Acts. Crime, for the purposes of this act, so far as relates to the registration of criminals, shall mean any felony or any offence not a felony specified in the first schedule hereto.

Part of act to be construed with Penal Servitude Acts.

PART III. *Habitual Criminals.*

Person
twice guilty
of felony
and not
punished
with penal
servitude to
be subject to
the super-
vision of the
police.

8. Where any person is convicted on indictment of any offence specified in the first schedule hereto in England or Ireland, and in the second schedule hereto in Scotland, and he be proved to have been previously convicted of any offence specified in the said schedule, either before or after the passing of this act, then, in addition to any other punishment which may be awarded to him, it shall be deemed to be part of the sentence passed on him, unless otherwise declared by the court, that he is to be subject to the supervision of the police as hereinafter mentioned for a period of seven years, or such less period as the court shall direct, commencing from the time at which he is convicted, and exclusive of the time during which he is undergoing his punishment.

Where any person is subject, in pursuance of this act, to the supervision of the police, he shall be guilty of an offence punishable (on summary conviction before two or more justices or a stipendiary magistrate) with imprisonment, with or without hard labour, for a term not exceeding one year, under the following circumstances, or any of them :

First. If, on his being charged by a constable or police officer with getting his livelihood by dishonest means, he fails to make it appear to the justices or magistrate before whom he is brought that he is not getting his livelihood by dishonest means :

Secondly. If he is found by any constable or police officer in any place, whether public or private, under such circumstances as to satisfy the justices or magistrate before whom he is brought that he was about to commit or to aid in the commission of any crime punishable on summary conviction or indictment, or was waiting for an opportunity to commit

or aid in the commission of any such crime :

Thirdly. If he is found by any person in or upon any dwelling house, or any building, yard, or premises, being parcel of or attached to such dwelling house, or in or upon any shop, warehouse, counting-house, or other place of business, or in any garden, orchard, pleasure ground, or nursery ground, without being able to account to the satisfaction of the justices or magistrate before whom he is brought for his being found on such premises.

Any person charged with being guilty of any offence punishable on summary conviction under this section may be taken into custody by any constable or police officer without warrant, or may, if charged with being guilty of an offence committed under the circumstances thirdly hereinbefore mentioned, or any of them, be apprehended by the owner or occupier of the property on which he is found, or by the servants of the owner or occupier, or by any other person authorised by the owner or occupier, and may be detained until he can be delivered into the custody of a constable or police officer for the purpose of being brought before the justices or magistrate ; provided that no person shall be so taken into custody on the ground that he is suspected of getting his livelihood by dishonest means except under a written authority from a chief officer of police.

When a person is convicted under this section of an offence which subjects him to the supervision of the police, the record of his conviction shall contain a statement to the effect that he is subject to the supervision of the police in pursuance of this act for a period of seven years commencing from the date of his conviction, and exclusive of the time during which he is undergoing his punishment, or words to the like purport, but the

omission of any such statement shall not exempt any person from the operation of this section.

A convict who has been sentenced to penal servitude shall not during the time when he is at large under a licence granted under the said Penal Servitude Acts, or any of them, be deemed for the purposes of this section to be undergoing his punishment.

Amendment
of sect 4 of
the Vagrant
Act, 5 Geo. 4,
c. 83.

9. And whereas by the fourth section of the act passed in the fifth year of the reign of King George the Fourth, chapter eighty-three, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England," it is, amongst other things, provided that every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort or any avenue leading thereto, or any street, highway or place adjacent, with intent to commit felony shall be deemed a rogue and vagabond, and may be apprehended and committed to prison with hard labour for any time not exceeding three calendar months: And whereas doubts are entertained as to the nature of the evidence required to prove for the purposes of the said section the intent to commit a felony: Be it enacted, that in proving such intent it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if, from the circumstances of the case, and from his known character as proved to the justices or magistrate, it appears to such justices or magistrate that his intent was to commit a felony.

Penalty for
harbouring
thieves, &c.

10. Every person who occupies or keeps any lodging-house, beerhouse, public house, or other

place where excisable liquors are sold, or place of public entertainment or public resort, and knowingly lodges or harbours thieves or reputed thieves, or knowingly permits or suffers them to meet or assemble therein, or allows the deposit of goods therein, having reasonable cause for believing them to be stolen, shall be liable, on summary conviction, to a penalty not exceeding ten pounds, and the justices or magistrate before whom he is brought may, if they or he think fit, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties, for keeping the peace or being of good behaviour during twelve months :

(1.) Provided that no person shall be imprisoned for not finding sureties in pursuance of this section for a longer period than three months :

(2.) The security required from a surety shall not exceed twenty pounds :

And any licence for the sale of any exciseable liquors or for keeping any place of public entertainment or public resort which has been granted to the occupier or keeper of any such house or place as aforesaid shall be forfeited on his first conviction of an offence under this section, and on his second conviction for such an offence he shall be disqualified for a period of two years from receiving any such licence ; moreover, where two convictions under this section have taken place within a period of two years in respect of the same premises, whether the persons convicted were or were not the same, the justices or magistrate may, if they or he so think fit, direct that for a term not exceeding one year from the date of the last of such convictions no such licence as aforesaid shall be granted to any person whatever in respect of such premises ; and any licence granted in contravention of this section by the excise or otherwise shall be void.

25 & 26 Vict.
c 101, s. 337

PART IV. *Receivers of Stolen Goods.*

Burden of
proof in
cases of re-
ceiving
stolen
goods.

11. Where any person who either before or after the passing of this act has been previously convicted of any offence specified in the first schedule hereto, and involving fraud or dishonesty, is found in the possession of stolen goods, evidence of such previous conviction shall be admissible as evidence of his knowledge that such goods have been stolen; and in any proceedings that may be taken against him as receiver of stolen goods, or otherwise in relation to his having been found in possession of such goods, proof may be given of his previous conviction before evidence is given of his having been found in possession of such stolen goods; provided that not less than seven days notice shall be given to such person that proof is intended to be given of his previous conviction, and that he will be deemed to have known such goods to have been stolen until he has proved the contrary.

Moreover, where proceedings are taken against any person for having in his possession stolen goods, evidence may be given that there were found in the possession of such person other goods stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the goods to be stolen which form the subject of the proceedings taken against him.

Any constable or police officer may, if authorised so to do in writing by a chief officer of police, enter any house, shop, warehouse, yard, or other premises in search of stolen goods, and make such search and seize and secure any property he may believe to have been stolen, in such manner as he would be authorised to do if he had a search warrant, and the property seized, if any, corresponded to the property described in such

search warrant: Provided that in every case in which any property is seized, the person on whose premises it was at the time of seizure, or the person from whom it was taken if other than the person on whose premises it was, shall, unless previously charged with receiving the same knowing it to have been stolen, be summoned within three days before a justice of the peace or other competent magistrate to account for his possession of such property, and such justice or other magistrate shall make such order respecting the disposal of property as the justice of the case may require; and it shall be lawful for any chief officer of police to give such authority as aforesaid in the following cases:

First. When such premises are at, or have been within eighteen months of, the time of such search in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves:

Second. When such premises are at the time of such search in the occupation of any person who has been convicted of any offence involving fraud or dishonesty, and punishable by penal servitude or imprisonment:

And it shall not be necessary for such chief officer of police in giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods.

PART V. *Assaults on Police.*

12. Where any person is convicted of an assault Assaults on police. and battery on any constable or police or peace officer when in the execution of his duty, such person shall on summary conviction before two or more justices, or one stipendiary magistrate, be liable either to pay a penalty not exceeding

twenty pounds, and in default of payment to be imprisoned for a term not exceeding six months, or, in the discretion of the court, to be imprisoned for any term not exceeding six months, with or without hard labour.

PART VI. *General Provisions.*

Power
to remand.

13. Any person accused of an offence punishable on summary conviction under this act may be remanded from time to time by the justices or magistrate before whom he is brought for the purpose of enabling evidence to be obtained against him, or for any other just cause.

Forms in
schedule.

14. The forms set forth in the second schedule to this act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law.

Constabulary station to include police stations in Dublin.

15. The "constabulary station" in section four of "The Penal Servitude Act, 1864," shall include any police station within the police district of Dublin metropolis.

Children of
convicts.

16. The provisions of "The Industrial Schools Act, 1861," shall apply to all the children under the age of fourteen years of any woman who shall be convicted for the second time of any offence specified in the first schedule thereto, when such children shall at the time of the conviction be under her care and control, and have no visible means of subsistence.

Penalty on
dealer in
old metals.

17. Any dealer in old metals as defined in "The Old Metal Dealers Act, 1861," who shall either personally or by any servant or agent purchase, receive, or bargain for lead, whether new or old, in any quantity at one time of less weight than one hundred and twelve pounds, or who shall

personally or by any servant or agent purchase, receive or bargain for copper, whether new or old, in any quantity at one time of less weight than fifty-six pounds, shall be liable to a penalty of five pounds, to be recovered in the same manner as penalties incurred under the said recited act are therein directed to be recovered.

FIRST SCHEDULE.

Any felony not punishable with death also, or the offence of uttering false or counterfeit coin or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or misdemeanor under the fifty-eighth section of the twenty-fourth and twenty-fifth Victoria, chapter ninety-six.

SECOND SCHEDULE.

Robbery, theft, assault with intent to rob, stoutthrief, falsehood, fraud, and wilful imposition, obtaining goods or money by false pretences, uttering false or counterfeit coin.

THIRD SCHEDULE.

— } To a constable of the said county of
to wit. } and to the keeper of the
prison at in the said county, and to
the governor of the (*convict prison*).

Whereas A.B. was this day brought before me the undersigned, one of Her Majesty's justices of the peace in and for the said county of having been taken into custody by C.D., a constable of the said county, under the provisions of "The Habitual Criminals Act, 1869," the said A.B. being the holder of a license granted under the Penal Servitude Acts, 1853, 1857, and 1864, or some of them, and suspected of getting a livelihood by dishonest means, and the said A.B. the holder of the said licence having failed to make it appear to the satisfaction of me the said justice that he is not getting a livelihood by dishonest means, the said licence so held by the said A.B. is forfeited; I the said justice, in pursuance of the above first-recited act, do commit the said A.B. to the prison, there to be detained until he can conveniently be removed to the (*convict prison*);

and I the said justice do therefore require you the said constable to take the said A.B., and him safely to convey to the prison aforesaid, and there to deliver him to the keeper thereof, together with this precept: and I do hereby command you the said keeper to receive into your custody the said A.B. in the said prison, and there safely keep him until he can conveniently be removed as aforesaid; and I do hereby require the said governor of the said (*convict prison*) to receive the said A.B., and to detain him until he has undergone the term of penal servitude to which he is liable under the Penal Servitude Acts, 1853, 1857, and 1864, or some of such acts.

Given under my hand and seal at in the said
county, this day of in the year of our
Lord one thousand eight hundred and

— } To a constable in the said county of
to wit. } and to the keeper of the house of cor-
 rection at in the said county.

Whereas A.B., being a person subject by the provisions of "The Habitual Criminals Act, 1869," to the supervision of the police, has been taken into custody by C.D., a constable, and brought this day before us the undersigned, two of Her Majesty's justices of the peace in and for the county of , and charged before us on the oath of the said C.C., taken before us and in the presence of the said A.B. [with being suspected by the said C.D. of getting his livelihood by dishonest means] or [with being found by the said C.D. in , under such circumstances as to give rise to suspicion that the said A.B. was about to commit or aid in the commission of a crime punishable on summary conviction or indictment, (that is to say,) or waiting for an opportunity to commit or aid in the commission of a crime punishable on summary conviction or indictment, (that is to say,)] or [with being found by in or upon a dwelling house, or building, or yard, or premises, being parcel of or attached to a dwelling house, or in or upon a shop, warehouse, counting-house, or other place of business, or in any garden, orchard, pleasure ground, or nursery ground, the said A.B. not being able satisfactorily to account for his being found on the said].

We, the said justices, do in pursuance of the above-recited act convict the said A.B. of the said offence, and adjudge that the said A.B. for the said offence shall be imprisoned in the house of correction at in the said county, and there kept to hard labour for the space of . These are therefore to command you, the said constable, to take the said A.B. and him safely to convey to the house of correction aforesaid, and there to deliver him to the keeper thereof, together with this precept: and we do hereby command you, the said keeper of the said house

of correction, to receive the said A.B. into your custody in the said house of correction, there to imprison him and keep him to hard labour for the space of

Given under our hands and seals at in the said
county this day of in the year of our
Lord one thousand eight hundred and

— } To a constable of the said county of
to wit. } , and to the keeper of the house of
 correction at , in the said county of

Whereas A.B. has been this day brought before us, the undersigned, two of Her Majesty's justices of the peace in and for the county of , under the provisions of "The Habitual Criminals Act, 1869," and it has been duly proved upon oath before us that the said A.B. has been three times convicted of felony: And whereas he is charged before us upon the oath of C.D., a constable, for that the said A. B. on the day of at the parish of in the said county of "was found by the said C.D. in

under such circumstances as to give rise to suspicion that he was about to commit or to aid in the commission of a crime punishable on summary conviction or indictment, or was waiting for an opportunity to commit or aid in the commission of a crime punishable on indictment or summary conviction;" or, ["was found by in or upon any dwelling house or any building, or yard, or premises, being parcel of or attached to such dwelling house, or in or upon any shop, warehouse, counting-house, or other place of business, or in any garden, orchard, pleasure ground, or nursery ground, without being able satisfactorily to account for his being found on such premises,"] contrary to the statute: Now we the said justices do, in pursuance of the above-recited act, convict the said A.B. of the said offence, and adjudge that the said A.B. for the said offence shall be imprisoned in the house of correction at in the said county, and there kept to hard labour for the space of

These are therefore to command you, the said constable, to take the said A.B. and him safely to convey to the house of correction aforesaid, and there deliver him to the keeper thereof, together with this precept; and we do command you, the said keeper of the said House of Correction, to receive the said A.B. into your custody in the said house of correction, there to imprison him and keep him to hard labour for the space of

Given under our hands and seals at this
day of in the year of our Lord one thousand
eight hundred and

— } To a constable of the said county of
to wit. } , and to the keeper of the house of
correction at in the said county of

Whereas A.B. was on this day duly convicted before me the undersigned, one of Her Majesty's justices of the peace in and for the county of , having been brought before me by C.D., a constable, under the provisions of "The Habitual Criminals Act, 1869," and charged upon the oath of the said C.D., taken before me in the presence and hearing of the said A.B., of being a rogue and vagabond within the intent and meaning of the statutes made in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons and Rogues and Vagabonds in that Part of Great Britain called England," and "The Habitual Criminals Act, 1869," before mentioned, (that is to say,) for that the said A.B. on the day of in the year of our Lord one thousand eight hundred and , in the parish of , in the said county of , [*here set out the circumstances under which the justice was of opinion that the said A.B. might reasonably be suspected to have intended to commit a felony*], contrary to the said statutes. And it was thereby adjudged that the said A.B. for the said offence should be imprisoned at the house of correction at , in the said county, and there kept to hard labour for the space of .

These are therefore to command you the said constable to take the said A.B., and him safely to convey to the house of correction aforesaid, and there to deliver him to the keeper thereof, together with this precept : and I do command you, the said keeper of the said house of correction, to receive the said A.B. into your custody in the said house of correction, there to imprison him and keep him to hard labour for the space of .

Given under my hand and seal at this day of in the year of our Lord one thousand eight hundred and .

FORFEITURES FOR TREASON AND FELONY ABOLITION ACT.

(33 & 34 VICT. CAP. 23.)

An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto.—[4th July, 1870.]

WHEREAS it is expedient to abolish the forfeiture of lands and goods for treason and felony, and to otherwise amend the law relating thereto :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. From and after the passing of this act no confession, verdict, inquest, conviction, or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in this act shall affect the law of forfeiture consequent upon outlawry.

Forfeiture,
&c. abo-
lished.

2. Provided nevertheless, that if any person hereafter convicted of treason or felony, for which he shall be sentenced to death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, shall at the time of such conviction hold any military or naval office, or any civil office under the Crown or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or be entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office, benefice, employment, or place shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such

Conviction
for treason
or felony to
be a disqua-
lification for
offices, &c.

person shall receive a free pardon from Her Majesty, within two months after such conviction, or before the filling up of such office, benefice, employment, or place if given at a later period; and such person shall become, and (until he shall have suffered the punishment to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon from Her Majesty), shall continue thenceforth incapable of holding any military or naval office, or any civil office under the Crown or other public employment, or any ecclesiastical benefice, or of being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland.

Persons convicted of treason or felony may be condemned in costs.

3. It shall be lawful for any court,⁽¹⁾ by which judgment shall be pronounced or recorded, upon the conviction of any person for treason or felony, in addition to such sentence as may otherwise by law be passed,⁽²⁾ to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such court it shall seem fit so to do;⁽³⁾ and the payment of such costs and

⁽¹⁾ "Any court competent to determine a charge of felony;" and it therefore extends to the summary jurisdiction of justices in cases of larceny and embezzlement.

⁽²⁾ It would appear from this that the order must be made at the time of the conviction, and as an addition to the sentence, and the following form is suggested: "And I further condemn you to pay (the costs) or (the expenses) or (one half) (or as the case may be) (of the costs) (or of the expenses) incurred in and about the prosecution and conviction for the offence of which you are now convicted."

⁽³⁾ It should be observed that the condemnation is to be for costs or expenses, and therefore both cannot be

expenses, or any part thereof, may be ordered by the court to be made out of any moneys⁽⁴⁾ taken from such person on his apprehension,⁽⁵⁾ or may be enforced at the instance of any person liable to pay, or who may have paid the same, in such and the same manner (subject to the provisions of this act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this act had not passed; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement

included. "Costs" will probably be construed as meaning the "legal" costs of the prosecution—"expenses" the other costs, *extra* the legal costs so incurred. The words "in and about" give wide latitude for such an order; and as it may be held to include expenses incurred in the inquiries preliminary to the appearance of the prisoner before the justices, the power thus lodged in the court may be often exercised with great advantage to remunerate for extraordinary exertions and expenditure in the tracing of crime and capturing the criminal, for which the law has hitherto made no provision.

(4) "Moneys" will include all coin and bank notes that are legal tender. But will the term include bank notes not legal tender, foreign bank notes, cheques, and such like? It will *not* include bills of exchange, promissory notes and warrants or orders for the payment of money.

(5) This power is limited to moneys taken from the prisoner on his apprehension. If read strictly, this would apply only to moneys in the manual possession of the prisoner. The question will speedily occur, if this useful provision extends to constructive possession, as where the prisoner has purposely passed away his money to his wife, to a servant, or to a comrade. Moneys found in his house in his absence would not be within the provision; but how if he were present at the time of the taking; would not the seizing of them then be a taking from him within both the spirit and the letter of the statute.

of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

Compensation to persons defrauded or injured by felony.

4. It shall be lawful for any such court as aforesaid,⁽⁶⁾ if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony,⁽⁷⁾ to award any sum of money, not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony,⁽⁸⁾ and the amount awarded for such satis-

(⁶) Great caution should be used in the exercise of the power given by this section. It is liable to be abused by private arrangements between the prosecutor and the prisoner, by which, in consideration of an order for compensation, there shall be recommendations to mercy, or suggestions for nominal punishment. This would operate practically as a condonation of felony. The compensation is not designed to be a part of the punishment, still less to be given in lieu of punishment. It is designed only to enable the court to add to the penalty for the crime which the wrong to the public demands, the compensation for the wrong to the individual which justice requires, but for which hitherto our law has provided no summary remedy.

(⁷) It will be observed that compensation must be awarded at the time of the trial, and immediately after the conviction, and although not so expressed, as in the case of costs or expenses, to be "in addition to such sentence as may otherwise by law be passed," nevertheless, inasmuch as it is to be awarded immediately after conviction and must be recorded, it should be an addition to the sentence.

(⁸) The assertion "*through or by means of the said felony*" admits of great latitude in its application. It appears that the judge or justice has an absolute discretion as to the sum to be awarded, and he may accept any statement he pleases made in any manner. But the prudent and proper course will be to take the statement of the applicant and others upon oath with some cross-examination of assertions as to alleged losses, to be assured, not only that the loss has been suffered, but, in the words of the statute, that it was "*through or by means of the felony of which the prisoner has just been*

faction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under the last preceding section of this act.⁽⁹⁾

5. The word "forfeiture," in the construction of this act, shall not include any fine or penalty imposed on any convict by virtue of his sentence.

The word "forfeiture" defined.

6. The expression "convict," as hereinafter used, shall be deemed to mean any person against whom, after the passing of this act, judgment of death, or of penal servitude, shall have been pronounced or recorded by any court of competent jurisdiction in England, Wales, or Ireland upon any charge of treason or felony.⁽¹⁰⁾

The word "convict" defined.

7. When any convict shall die or be made bankrupt, or shall have suffered any punishment to which sentence of death if pronounced or recorded against him may be lawfully commuted, or shall have undergone the full term of penal servitude for which judgment shall have been

When convict shall cease to be subject to operation of the act.

convicted." When the provision comes to be generally known, these applications will be frequent, and much ingenuity will be exercised in the concoction of questionable claims. Unless other evidence of loss is perfectly satisfactory, the most prudent course will be to limit the orders to compensation for losses that are proved in the course of the trial.

⁽⁹⁾ The remedy here is cumulative. In addition to the same remedies as are given in the case of costs, an order for compensation is to operate as a judgment debt. But it may also be ordered to be paid from the moneys taken from the prisoner on his apprehension.

⁽¹⁰⁾ The following provisions of the statute relate only to the property of "a convict," who is defined to be a person against whom a judgment of death or of penal servitude have been passed on a charge of treason or felony. They do not apply to misdemeanants, nor where the sentence is for imprisonment only.

pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or shall have received Her Majesty's pardon for the treason or felony of which he may have been convicted, he shall thenceforth, so far as relates to the provisions hereinafter contained, cease to be subject to the operation of this act.

Convict disabled to sue for or to alienate property, &c.

8. No action at law or suit in equity for the recovery of any property, debt, or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this act; and every convict shall be incapable, during such time as aforesaid, of alienating or charging any property, or of making any contract, save as hereinafter provided.

The Crown may appoint administrators of any convict's property.

9. It shall be lawful for Her Majesty, or for any person in that behalf authorised by Her Majesty, under her royal sign manual (and which authority may be given either generally or with reference to any particular case), if to Her Majesty or to the person so authorised it shall seem fit, by writing under Her Majesty's royal sign manual, or under the hand of the person so authorised as aforesaid, to commit the custody and management of the property of any convict, during Her Majesty's pleasure, to an administrator, to be by such writing appointed in that behalf,⁽¹¹⁾ and every such appointment may be revoked by the same or the like authority by which it is made; and upon any determination thereof, either by revocation or by the death of any such administrator, a new administrator may be appointed by

(¹¹) This formidable officer, to be appointed under the sign manual of the sovereign, is not likely to be called in save in the rare cases of the convict being a very wealthy man. For all ordinary persons a curator will, doubtless, be preferred; for which, see sect. 21.

the same or the like authority from time to time ; and every such new administrator shall, upon his appointment, be and be deemed to be the successor-in-law of the former administrator ; and all property vested in, and all powers given to, such former administrator by virtue of this act shall thereupon devolve to and become vested in such successor, who shall be bound by all acts lawfully done by such former administrator during the continuance of his office ; and the provisions hereinafter contained with reference to any administrator shall, in the case of the appointment of more than one person, apply to such administrators jointly.

10. Upon the appointment of any such administrator in manner aforesaid all the real and personal property, including choses in actions, to which the convict named in such appointment was at the time of his conviction, or shall afterwards while he shall continue subject to the operations of this act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

Convict's property to vest in administrators on their appointment.

11. If, in the instrument by which any such administrator is appointed, provision shall be made for the remuneration of such administrator out of the property of the convict, the said administrator may receive and retain for his own benefit such remuneration accordingly.

Remuneration of administrators.

12. The administrator shall have absolute power to let, mortgage, sell, convey, and transfer any part of such property as to him shall seem fit.

Administrators to have administration of property during sentences of convicts.

13. It shall be lawful for the administrator to pay or cause to be paid out of such property, or the proceeds thereof, all costs and expenses which the convict may have been condemned to pay ; and also all costs, charges, and expenses incurred by such convict in and about his defence ; and also all such costs, charges, and expenses as the

Administrator to pay out of property costs of prosecution and costs of executing this act.

said administrator may incur or be put to in or about the carrying this act into execution with reference to such property, or with reference to any claims which may be made thereon.

Administrator may pay out of property debts or liabilities of convict.

14. The administrator may cause payment or satisfaction to be made out of such property of any debt or liability of such convict which may be established in due course of law, or may otherwise be proved to his satisfaction, and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled thereto, upon the right of such person being established in due course of law, or otherwise to his satisfaction.

Administrators may make compensations out of property to persons defrauded by criminal acts of convict.

15. The administrator may cause to be paid or satisfied out of such property such sum of money by way of satisfaction or compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of such convict, as to him shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in any court of law or equity; and all claims to any such satisfaction or compensation may be investigated in such manner as the administrator shall think fit, and the decision of the administrator thereon shall be binding: Provided always, that nothing in this act shall take away or prejudice any right, title, or remedy to which any person alleging himself to have suffered any such loss or injury would have been entitled by law if this act had not passed.

Administrator may make allowances out of property for support of family of convict.

16. The administrator may cause such payments and allowances for the support or maintenance of any wife or child, or reputed child of such convict, or of any other relative or reputed relative of such convict dependent upon him for support, or for the benefit of the convict himself, if and while he shall be lawfully at large under any licence, as to such

administrator shall seem fit, to be made from time to time out of such property, or the income thereof.

17. The several powers hereinbefore given to the said administrator, or any of them, may be exercised by him in such order and course, as to priority of payments or otherwise, as he shall think fit; and all contracts of letting or sale, mortgages, conveyances, or transfers of property, *bonâ fide* made by the said administrator under the powers of this act, and all payments or deliveries over of property *bonâ fide* made by or under the authority of the said administrator for any of the purposes hereinbefore mentioned, shall be binding; and the propriety thereof, and the sufficiency of the grounds on which the said administrator may have exercised his judgment or discretion in respect thereof, shall not be in any manner called in question by such convict, or by any person claiming an interest in such property by virtue of this act.

Exercise of administrator's power as to priority of payments by administrator for purposes of act not to be called in question.

18. Subject to the powers and provisions hereinbefore contained, all such property and the income thereof shall be preserved and held in trust by the said administrator, and the income thereof may, if and when the said administrator shall think proper, be invested and accumulated in such securities as he shall from time to time think fit, for the use and benefit of the said convict and his heirs, or legal personal representatives, or of such other persons as may be lawfully entitled thereto, according to the nature thereof; and the same, and the possession, administration, and management thereof, shall re-vest in and be restored to such convict upon his ceasing to be subject to the operation of this act, or in and to his heirs or legal personal representatives, or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this act given to the said administrator shall from thenceforth cease

Property to be preserved for convict, and to revert to him or his representatives on completion of sentence, pardon, or death.

and determine, except so far as the continuance thereof may be necessary for the care and preservation of such property or any part thereof, until the same shall be claimed by some person lawfully entitled thereto, or for obtaining payment out of such property, or of the proceeds thereof, of any liabilities, or any costs, charges, or expenses, for which provision is made by this act; for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the said administrator to some person being or claiming to be lawfully entitled thereto.

Administrators not to be liable except for what they receive

19. The said administrator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this act, nor for any loss or damage which may happen through any mere omission or nonfeasance on his part to any property vested in him by virtue hereof.

Administrator to receive costs of suits of property as between solicitor and client.

20. The costs as between solicitor and client of every action or suit which may be brought against the said administrator with reference to any such property as aforesaid, whether during the time while the same shall be and continue vested in him under this act or after the same shall cease to be so vested, and all charges and expenses properly incurred by him with reference thereto, shall be a first charge upon and shall be paid out of such property, unless the court before which such action is tried or such suit is heard shall think fit otherwise to order.

If no administrator, interim curator may be appointed by justices.

21. If no such administrator as aforesaid shall have been appointed an interim curator⁽¹²⁾ of the property of any convict may be appointed by any

(¹²) Although called an interim curator, he is in fact invested with the same powers as an administrator under sect. 9, and, therefore, will doubtless be generally preferred.

justices of the peace in petty sessions assembled, or, where there are no petty sessions, by any justice of the peace having jurisdiction in the place where such convict before his conviction shall have last usually resided, upon the application of any person who shall be able to satisfy such justice that the application is made *bond fide* with a view to the benefit of the convict or of his family, or to the due and proper administration and management of his property and affairs; and the interim curator to be appointed may be either the person making the application or any other person willing to accept the office, and competent to discharge its duties, as to such justice shall seem fit.

22. Before making any such appointment the justice shall require the applicant to make oath that no administrator or interim curator of the property of such convict has been to his knowledge or belief already appointed; and the applicant shall also state upon oath, to the best of his knowledge and belief, who are the nearest relatives (including any husband or wife) of such convict, and (if any such there be) where they are residing, and whether any and which of them have consented to or have had notice of such application; and it shall be competent for such justice to require notice of such application to be given to all such persons and in such manner as to such justice shall seem fit.

Proceedings
before
justices.

23. Any interim curator so appointed may be removed, for any cause shown to the satisfaction of the justices or justice or the court, upon the application of any relative of the convict, or of any person interested in the due and proper administration and management of his property and affairs, either by the petty sessions or justice by whom he was appointed (or, in the event of such justice dying or being unable to act, by any other justice having the like jurisdiction) or by

Removal of
interim
curator for
cause
shown.

any court in which proceedings for an account may be instituted as hereinafter provided; and upon the death or removal of any such interim curator a new interim curator may be appointed in the same manner and by the like authority as aforesaid, or (in case any such proceedings shall be then depending) by the court in which any such proceedings shall be so depending as aforesaid.

Powers of
interim
curator.

24. Every interim curator so appointed as aforesaid shall have power (unless and until an administrator shall be appointed under this act, in which case the authority of such interim curator shall thenceforth cease and determine) to sue in his own name as such interim curator, at law or in equity, for the possession and recovery of any part of the property in respect of which he shall have been so appointed, or for damages in respect of any injury thereto, and to defend in his own name as such interim curator any action or suit brought against such convict or against himself in respect of such property, and to receive and give legal discharges for all rents, dividends, interest, and income of or arising from such property, and also to receive and give discharges for any debts due to such convict, or forming part of his property, and to pay and discharge all or any debts due from such convict out of such property, and to settle and adjust accounts with any debtor or creditor of such convict, and generally to manage and administer the property of such convict; and also to make or cause to be made such payments and allowances for the support or maintenance of any wife or child of such convict, or of any other relative dependent on him for support, as shall be specially authorized by any such justice or court aforesaid (who shall have power from time to time to authorize the same), or by any other court having competent jurisdiction to

authorize the same, out of the income of such property, or (in case such income shall be insufficient for that purpose) out of the capital thereof; and every such interim curator shall be entitled to retain out of such property, or out of the income thereof, all his costs, charges, and expenses properly incurred in and about the discharge of his duties as such curator.

25. Any personal property of such convict may be sold and transferred by such interim curator by and with the authority of such justice or court as aforesaid, or of any other court having competent jurisdiction to order the same, but not otherwise; and such interim curator shall be accountable for the proceeds of any property so sold in the same manner as for such property while remaining unsold.

Personal property may be sold by interim curator under special order of justices or court.

26. All proceedings at law or in equity duly instituted by or against any such interim curator may (in case of an administrator or a new interim curator being afterwards appointed) be continued by or against such administrator or such new interim curator without any abatement thereof, the appointment of such administrator or new interim curator being entered by way of suggestion on the record, or otherwise stated upon the proceedings, according to the practice of such court; and all acts lawfully done and contracts lawfully made by such interim curator with respect to any property of such convict before the appointment of such administrator or such new interim curator shall be binding upon such administrator or such new interim curator after his appointment.

Proceedings by or against interim curator not to abate if administrator is appointed.

27. All judgments or orders for the payment of money of any court of law or equity against such convict which shall have been duly recovered or made, either before or after his conviction, may be executed against any property of such convict

Execution of judgments against convict provided for.

under the care and management of any such interim curator as aforesaid, or in the hands of any person who may have taken upon himself the possession or management thereof without legal authority, in the same manner as if such property were in the possession or power of such convict; and all such judgments or orders may likewise be executed by writ of *scire facias* or otherwise, according to the practice of the court, against any such property which may be vested in any administrator of the property of such convict under the authority of this act.

Proceedings
may be
taken to
make admin-
istrator or
interim
curator, &c.
accountable
before prop-
erty reverts
to convict.

28. It shall be competent for Her Majesty's Attorney-General, or other the chief law officer of the crown for the time being in any part of Her Majesty's dominions, or for any person who (if such convict were dead intestate) would be his heir at law, or entitled to his personal estate, or any share thereof, under the Statutes of Distribution or otherwise, or for any person authorised by Her Majesty's Attorney-General, or by such chief law officer as aforesaid, in that behalf, to apply in a summary way to any court which (if such convict were dead) would have jurisdiction to entertain a suit for the administration of his real or personal estate, to issue a writ of summons calling upon any administrator or interim curator of the property of such convict appointed under this act, or any person who without legal authority shall have possessed himself of any part of the property of such convict, to account for his receipts and payments in respect of the property of such convict, in such manner as such court shall direct; and it shall be lawful for such court thereupon to issue such writ of summons, and to enforce obedience thereto, and to all orders and proceedings of such court consequent thereon, in the same manner as in any other case of process lawfully issuing out of such court; and such

court shall thereupon have full power, jurisdiction, and authority to take all such accounts, and to make and give all such orders and directions as to it shall seem proper or necessary for the purpose of securing the due and proper care, administration, and management of the property of such convict, and the due and proper application of the same, and of the income thereof, and the accumulation and investment of such balances, if any, as may from time to time remain in the hands of any such administrator or interim curator, or other person as aforesaid in respect of such property; and so long as any such proceedings shall be pending in any such court, every such administrator or interim curator, or other person, shall act in the exercise of all powers vested in him under this act, or otherwise in all respects as such court shall direct; and it shall be lawful for such court (if it shall think fit) to authorise and direct any act to be done by any such interim curator which might competently be done by an administrator duly appointed under this act.

29. Subject to the provisions of this act, every such administrator, interim curator, and other person as aforesaid shall, from and after the time when such convict shall cease to be subject to the operation of this act, be accountable to such convict for all property of such convict which shall have been by him possessed or received and not duly administered, in the same manner in which any guardian or trustee is now accountable to his ward or *cestui que trust*; but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this act.

Administrator, &c. to be accountable to convict when property reverts.

30. Provided always, that no property acquired by a convict during the time which he shall be lawfully at large under any licence shall vest in any administrator appointed under this

Property of convict acquired while lawfully at large not to be subject to

the operation of this act.

act, but such convict shall be entitled thereto without any interference on the part of any administrator or interim curator appointed under this act, and during the time last aforesaid the disabilities mentioned in the eighth section of this act shall, as to such convict, be suspended.

Judgment in cases of high treason

31. From and after the passing of this act such portions of the acts of the thirtieth year of George the Third, chapter forty-eight, and the fifty-fourth year of George the Third, chapter one hundred and forty-six, as enacts that the judgment required by law to be awarded against persons adjudged guilty of high treason shall include the drawing of the person on a hurdle to the place of execution, and, after execution, the severing of the head from the body, and the dividing of the body into four quarters, shall be and are hereby repealed.

Saving of general law as to felony.

32. Provided always, that nothing in this act shall be deemed to alter or in anywise affect the law relating to felony in England, Wales, or Ireland, except as herein is expressly enacted.

Extent of act.

33. This act shall not apply to Scotland.

EVIDENCE AMENDMENT ACT.

(33 & 34 VICT. CAP. 49.)

An Act to explain and amend "The Evidence Further Amendment Act, 1869."—[9th August, 1870.]

WHEREAS it was enacted by the "Evidence Further Amendment Act, 1869," sect. 4, as follows:

"If any person called to give evidence in any court of justice, whether in a civil or a criminal

proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration :

“ ‘I solemnly promise and declare, that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.’ ”

“ And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath : ”

And whereas doubts have arisen as to the extent and meaning of the words “ court of justice ” and “ presiding judge ” in the said section :

Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The words “ court of justice,” and the words “ presiding judge,” in sect. 4 of the said Evidence Further Amendment Act, 1869, shall be deemed to include any person or persons having by law authority to administer an oath for the taking of evidence.

Interpretation of “ court of justice ” and “ presiding judge ” in recited act.

2. This act may be cited for all purposes as “ The Evidence Amendment Act, 1870.”

Short title.

3. This act shall not extend to Scotland.

Not to extend to Scotland.

THE EXTRADITION ACT.

(33 & 34 VICT. CAP. 52.)

An Act for amending the Law relating to the Extradition of Criminals.—[9th August, 1870.]

WHEREAS it is expedient to amend the law relating to the surrender to foreign states of persons accused or convicted of the commission of certain crimes within the jurisdiction of such states, and to the trial of criminals surrendered by foreign states to this country :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This act may be cited as "The Extradition Act, 1870."

Where arrangement for surrender of criminals made, Order in Council to apply act.

2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by Order in Council, direct that this act shall apply in the case of such foreign state.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is

made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the *London Gazette*.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals: Restrictions on surrender of criminals.

- (1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character :
- (2.) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded :
- (3.) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise :
- (4.) A fugitive criminal shall not be surrendered until the expiration of fifteen days from

the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender.

4. An Order in Council for applying this act in the case of any foreign state shall not be made unless the arrangement—

- (1.) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,
- (2.) is in conformity with the provisions of this act, and in particular with the restrictions on the surrender of fugitive criminals contained in this act.

Publication and effect of order.

5. When an order applying this act in the case of any foreign state has been published in the *London Gazette*, this act (after the date specified in the order, or if no date is specified, after the date of the publication,) shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this act, and that this act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

Liability of criminal to surrender.

6. Where this act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

7. A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

Issue of warrant by police magistrate, justice, &c.

(1.) by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and

(2.) by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or

complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of
case and evi-
dence of
political cha-
racter of
crime.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Committal
or discharge
of prisoner.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in

England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*.

Surrender of
fugitive to
foreign state
by warrant
of Secretary
of State.

Upon the expiration of the said fifteen days, or, if a writ of *habeas corpus* is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so autho-

rised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of *habeas corpus* is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution of warrant of police magistrate.

13. The warrant of the police magistrate issued in pursuance of this act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Depositions to be evidence; 6 & 7 Vict. c. 76.

14. Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this act.

Authentication of depositions and

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates

of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law or authenticated as follows :

warrants.
29 & 30 Vict.
c. 121.

- (1.) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued ;
- (2.) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require ; and
- (3.) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place ; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state : And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at Sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect :

Jurisdiction
as to crimes
committed
at sea.

1. This act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland,

were substituted for the police magistrate throughout this act, except the part relating to the execution of the warrant of the police magistrate :

2. The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime :
3. If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

Fugitive Criminals in British Possessions.

Proceedings
as to fugi-
tive crimi-
nals in
British pos-
sessions.

17. This act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications ; namely,

- (1.) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency :
- (2.) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this act by the police magistrate and the Secretary of State, or either of them, in

relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone :

(3.) Any prison in the British possession may be substituted for a prison in Middlesex :

(4.) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

18. If by any law or ordinance, made before or after the passing of this act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this act in the case of any foreign state, or by any subsequent order, either

Saving of laws of British possessions.

suspend the operation within any such British possession of this act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer ;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this act.

General Provisions.

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried

Criminal surrendered by foreign state not triable for previous crime.

for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to use of forms in second schedule.

20. The forms set forth in the second schedule to this act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

Revocation, &c., of Order in Council.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this act, any Order in Council made in pursuance of this act, and all the provisions of this act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order.

Application of act in Channel Islands and Isle of Man.

22. This act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorised and required to register this act.

Saving for Indian treaties.

23. Nothing in this act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this act.

Power of foreign state to obtain evidence in United Kingdom.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the act of the session of the

nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and thirteen, intituled "An Act to provide for taking evidence in Her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

25. For the purposes of this act, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this act) be deemed to be within the jurisdiction of and to be part of such foreign state.

Foreign state includes dependencies.

26. In this act, unless the context otherwise requires,—

Definition of terms.

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession:

"British possession:"

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only:

"Legislature:"

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India:

"Governor:"

The term "extradition crime" means a crime

"Extradition crime:"

which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this act :

"Conviction :"

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy :

"Fugitive criminal :"

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state :

"Fugitive criminal of a foreign state :"

"Secretary of State :"

The term "Secretary of State" means one of Her Majesty's principal Secretaries of State :

"Police magistrate :"

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police-court in Bow-street :

"Justice of the peace :"

The term "justice of the peace" includes in Scotland any sheriff, sheriff's substitute, or magistrate :

"Warrant :"

The term "warrant," in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of crime.

Repeal of Acts.

Repeal of acts in third schedule.

27. The acts specified in the third schedule to this act are hereby repealed as to the whole of Her Majesty's dominions; and this act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the acts so repealed) shall apply (as regards crimes committed either before or after the passing of this

act), in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this act.

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered, in the same manner as if this act had not passed.

SCHEDULES.

FIRST SCHEDULE.

List of Crimes.

The following list of crimes is to be construed according to the law existing in England, or in a British possession, (as the case may be,) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this act :

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any act for the time being in force.

Rape.

Abduction.

Child stealing.

Burglary and housebreaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of Order of Secretary of State to the Police Magistrate.

To the chief magistrate of the metropolitan police courts
or other magistrate of the metropolitan police court in
Bow-street [or the stipendiary magistrate at].

Whereas, in pursuance of an arrangement with
referred to in an Order of Her Majesty in Council dated
the day of , a requisition has been made to
me, , one of Her Majesty's principal Secretaries of
State, by , the diplomatic representative of
for the surrender of , late of , accused [or
convicted] of the commission of the crime of
within the jurisdiction of : Now I hereby, by
this my order under my hand and seal, signify to you that
such requisition has been made, and require you to issue
your warrant for the apprehension of such fugitive, pro-
vided that the conditions of the Extradition Act, 1870,
relating to the issue of such warrant, are in your judgment
complied with.

Given under the hand and seal of the undersigned, one
of Her Majesty's principal Secretaries of State,
this day of 18 .

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police { To all and each of the constables of the
district, [or county or { metropolitan police force [or of the
borough of] to wit { county or borough of].

Whereas the Right Honourable one of Her
Majesty's principal Secretaries of State, by order under his
hand and seal, hath signified to me that requisition hath
been duly made to him for the surrender of late
of accused [or convicted] of the commission of the
crime of within the jurisdiction of : This is
therefore to command you in Her Majesty's name forthwith
to apprehend the said pursuant to the Extradition
Act, 1870, wherever he may be found in the United King-
dom or Isle of Man, and bring him before me or some other
[*magistrate sitting in this court], to show cause why he
should not be surrendered in pursuance of the said Extra-
dition Act, for which this shall be your warrant.

Given under my hand and seal at [*Bow-street, one of
the police courts of the metropolis] this day
of 18 .

J. P.

* Note.—Alter as required.

Form of Warrant of Apprehension without Order of Secretary of State.

Metropolitan police { To all and each of the constables of the
 district, [or county or } metropolitan police force [or of the
 borough of] to wit. { county or borough of].

Whereas it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of] that late of is accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this court [or one of Her Majesty's justices of the peace in and for the county [or borough] of] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow-street, one of
 the police courts of the metropolis, [or in
 the county or borough aforesaid] this day
 of 18 . J. P.

Form of Warrant for bringing Prisoner before the Police Magistrate.

County [or { To constable of the police force
 borough] { of and to all other peace officers in
 of to wit. { the said county [or borough] of .

Whereas late of accused [or alleged to be convicted of] the commission of the crime of within the jurisdiction of has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [or borough] of And whereas by the Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow-street, within the metropolitan police district [or the stipendiary magistrate for]: This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said to the metropolitan police district [or the said] and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow-street within the said district [or before a stipendiary magistrate sitting in the said] to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at in the county
 [or borough] aforesaid, this day of 18 .
 J. P.

Form of Warrant of Committal.

Metropolitan police district [or the county or borough of] } To one of the constables of the metropolitan police force, [or of the police force of the county or borough of], and to the keeper of the

Be it remembered that on this day of in the year of our Lord late of is brought before me the chief magistrate of the metropolitan police courts [or one of the police magistrates of the metropolis] sitting at the police court in Bow-street, within the metropolitan police district, [or a stipendiary magistrate for], to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, on the ground of his being accused [or convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said act:

This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you the said keeper to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow-street, one of the police courts of the metropolis, [or at the said] this day of 18 .

J. P.

Form of Warrant of Secretary of State for Surrender of Fugitive.

To the keeper of and to

Whereas late of accused [or convicted] of the commission of the crime of within the jurisdiction of , was delivered into the custody of you the keeper of by warrant dated pursuant to the Extradition Act, 1870:

Now I do hereby, in pursuance of the said act, order you the said keeper to deliver the body of the said into the custody of the said , and I command you the said to receive the said into your custody, and to convey him within the jurisdiction of the said , and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's principal Secretaries of State, this day of .

THIRD SCHEDULE.

| Year and Chapter. | Title. |
|----------------------|---|
| 6 & 7 Vict. c. 75 | An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders. |
| 6 & 7 Vict. c. 76 | An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders. |
| 8 & 9 Vict. c. 120 | An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders. |
| 25 & 26 Vict. c. 70 | An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals. |
| 29 & 30 Vict. c. 121 | An Act for the amendment of the law relating to treaties of extradition. |

THE FORGERY ACT.

(33 & 34 VICT. CAP. 58.)

An Act to further amend the Law relating to indictable Offences by Forgery.—[9th August 1870.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as "The Forgery Act, Short title. 1870."

2. This act shall have effect as one act with the act described in the schedule to this act, but shall extend to the United Kingdom. Construction and extent of act.

3. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same Forgery of stock certificates, &c.

to be forged or altered, any stock certificate or coupon, or any document purporting to be a stock certificate or coupon, issued in pursuance of Part V. of the National Debt Act, 1870, or of any former act,—or demands or endeavours to obtain or receive any share or interest of or in any stock as defined in the National Debt Act, 1870, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered certificate or coupon, or document purporting as aforesaid, knowing the same to be forged or altered,—with intent in any of the cases aforesaid to defraud, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Personation
of owners of
stock.

4. If any person falsely and deceitfully personates any owner of any share or interest of or in any such stock as aforesaid, or of any such stock certificate or coupon as aforesaid, and thereby obtains or endeavours to obtain any such stock certificate or coupon,—or receives or endeavours to receive any money due to any such owner, as if such person were the true and lawful owner,—he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Engraving
plates, &c.,
for stock
certificates,
&c.

5. If any person, without lawful authority or excuse, the proof whereof shall lie on the party accused, engraves or makes on any plate, wood, stone, or other material any stock certificate or coupon purporting to be such a stock certificate or coupon as aforesaid, or to be such a stock certifi-

cate or coupon as aforesaid in blank, or to be a part of such a stock certificate or coupon as aforesaid,—or uses any such plate, wood, stone, or other material for the making or printing of any such stock certificate or coupon, or blank stock certificate or coupon as aforesaid, or any part thereof respectively,—or knowingly has in his custody or possession any such plate, wood, stone, or other material,—or knowingly offers, utters, disposes of, or puts off, or has in his custody or possession any paper on which any such blank stock certificate or coupon as aforesaid, or part of any such stock certificate or coupon as aforesaid, is made or printed,—he shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

6. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate or duplicate certificate required by Part VI. of the National Debt Act, 1870, or by any former like enactment, with intent in any of the cases aforesaid to defraud, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forgery of certificates of transfer of stocks from England to Ireland, &c.

7. Sections two and four and all provisions relative thereto of the act described in the schedule to this act, and all enactments amending those sections and provisions, or any of them, shall extend to Scotland.

Extension of provisions of Forgery Act to Scotland.

Alteration
as to Scot-
land.

8. In the application to Scotland of this act, and of the enactments by this act extended to Scotland, the term "high crime and offence" shall be substituted for the term "felony."

THE SCHEDULE.

Act referred to.

24 & 25 Vict. c. 98.—An Act to consolidate and amend the statute law of England and Ireland, relating to indictable offences by forgery.

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